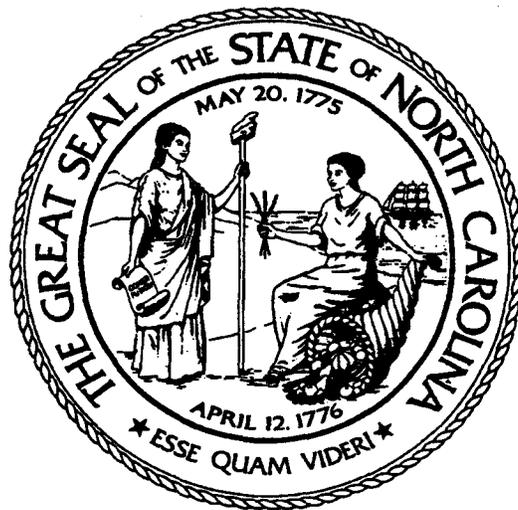


**LEGISLATIVE
RESEARCH COMMISSION**

ADULT GUARDIANSHIP



**REPORT TO THE
1995 GENERAL ASSEMBLY
OF NORTH CAROLINA**

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January 13, 1995

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY:

The Legislative Research Commission herewith submits to you for your consideration its final report on ways to improve adult guardianship. The report was prepared by the Legislative Research Commission's Committee on Adult Guardianship pursuant to G.S. 120-30.17(1).

Respectfully submitted,

Handwritten signature of Daniel T. Blue, Jr.

Daniel T. Blue, Jr.
Speaker of the House

Handwritten signature of Marc Basnight.

Marc Basnight
President Pro Tempore

Cochairmen
Legislative Research Commission

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1993-1994

LEGISLATIVE RESEARCH COMMISSION

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Senator Frank W. Ballance, Jr.
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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1993 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of ways to improve adult guardianship services would have been authorized by Section 2.1 (25) of the 2nd Edition of House Bill 1319 which passed both chambers but inadvertently was among the bills not ratified at the end of the 1993 Session.

Part II of the 2nd Edition of House Bill 1319 would allow this study to consider House Bill 451 in determining the nature, scope and aspects of the study. House Bill 451 (2nd Edition) reads in part: "The Legislative Research Commission may study ways and means of improving the provision of guardianship services including increased quality of services, the avoidance of conflicts of interest, the role of State agencies, the coordination of services statewide, and the adequacy of staffing and funding." The relevant portions of the 2nd Edition of House Bill 1319 and House Bull 451 are included in Appendix A. The Legislative Research Commission authorized this study in the Fall of 1993 under authority of G.S. 120-30.17(1) and grouped this study in its Civil and Criminal Law Grouping area under the direction of Representative Bertha M. Holt. (House Bill 1319 was later amended and ratified in 1994 with the Legislative Research Commission studies 2nd Edition language deleted because the Legislative Research Commission had already acted on these matters.)

The Committee was chaired by Senator Ollie Harris and Representative Karen E. Gottovi. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.

COMMITTEE PROCEEDINGS

The Legislative Research Commission's Study Committee on Adult Guardianship met a total of five times. Below is a summary of each meeting. Detailed minutes of the committee's proceedings, including handouts distributed to the Committee, are available in the Committee notebook in the Legislative Library.

January 26, 1994 Meeting

The first meeting of the Committee began with a report from the Department of Human Resources/Administrative Office of the Courts (DHR/AOC) Task Force on Adult Guardianship. Mr. Pete Powell, Administrative Office of the Courts, delivered remarks for Mr. Tom Andrews, Administrative Office of the Courts, and Co-Chair of the DHR/AOC Task Force who was unable to attend the meeting. Mr. Powell explained that the Task Force, and this Committee, are concerned with issues of adult guardianship, not the guardianship of minors. These adults are mentally incompetent and, for the most part, indigent or near indigent. The Task Force was concerned with the improved delivery of guardianship services to incompetent adults. The statutes governing the determination of incompetency, the powers and duties of guardians, and the supervision of guardians are not in need of reform.

Ms. Suzanne Merrill, Assistant Chief, Adult and Family Services, Division of Social Services, Department of Human Resources, and Co-Chair of the Task Force highlighted the issues identified by the Task Force which included: (1) the significant growth in the elderly population; (2) the inadequacy of resources available to provide guardianship services; (3) difficulty finding family members and other individuals to serve as guardians; (4) the lack of funding for public agent guardians; (5) training and education for the clerks in appointing guardians; and (6) dealing with conflicts of interests for public agent guardians.

Mr. Powell, again speaking for Mr. Andrews, concluded the presentation by identifying some essential responsibilities needed for a better system. These include: (1) providing improved training, support, information and supervision for family members and friends appointed as guardians; (2) recruiting and training volunteer guardians; and (3) coordinating efforts of individuals and agencies to provide guardians. A complete summary of Mr. Powell's and Ms. Merrill's remarks is contained in Appendix C of this report. An outline of the work of the DHR/AOC Task Force is contained in Appendix D of this report.

Following Mr. Powell's and Ms. Merrill's remarks, the Committee heard from representatives of the three local human resource agencies appointed under the State statutes as public agent guardians: (1) county departments of social services; (2) area mental health programs; and (3) local health departments. Under North Carolina law, a public agent guardian is appointed only if an individual or corporate guardian cannot be found. Speaking for the county departments of social services, Mr. E.C. Medlin, Director, Cumberland County Department of Social Services, began by saying that, in his opinion, the departments of social services were better qualified to take the lead role

in adult guardianship because they are better equipped and because they deal with incompetent adults on a regular basis. Mr. Medlin stressed, however, that the various departments are in need of training and funding. According to Mr. Medlin, there also needs to be more conformity among the county departments in providing guardianship services.

Mr. Robert Parker, Health Director, New Hanover County Health Department, and President, N.C. Association of Local Health Directors spoke on behalf of the health departments. Mr. Parker explained the the local health departments requested the introduction of House Bill 451 which prompted this study. In its original form, House Bill 451 excluded local health departments from appointment as public agent guardians. Clerks of court have, in desperation, begun appointing health departments as guardians in various counties. According to Mr. Parker, although no agency is fully equipped to deal with guardianships at the present time, health directors are the least qualified to serve as guardians. Health directors are not trained to be guardians and have little relationship with guardianship services. Rather, health directors are schooled to promote disease prevention in the community. Mr. Parker agreed that under the present system, social services departments are the best equipped to serve as guardians. If the present system is changed, he asked the committee to consider the creation of a separate government agency to deal with adult guardianships.

Mr. Tom Maynard, Area Director, Orange-Person-Chatham Health, Developmental Disabilities and Substance Abuse Authority, explained that area mental health authorities are, as with most public agencies, understaffed and are not equipped to serve as guardians. He also believes that it is a conflict of interest for area mental

health directors to serve as guardians because it is their responsibility to oversee the agencies that often provide care to incompetent adults.

April 29, 1994 Meeting

At its meeting on April 29, 1994, the Committee began with an overview of other state programs of adult guardianship. Ms. Suzanne Merrill, Assistant Chief, Adult and Family Services, Division of Social Services, and Ms. Vicki Kryk, Program Manager, Adult Protective Services and Guardianship, Division of Social Services, explained that there were essentially 4 different models of adult guardianship: (1) Independent State Office Model; (2) Human Service Agency Model; (3) Corporate Model; and (4) Judicial Model. Ms. Merrill noted that North Carolina employs a human service agency system to deliver guardianship services. In North Carolina, if an individual or corporate guardian cannot be found, local agencies such as departments of social services, area mental health programs, and health departments are appointed by the clerk as guardians. The Department of Human Resources oversees and administers the system. A detailed description of the different models of adult guardianship entitled Guardianship Programs in Other Selected States is attached as Appendix E of this report.

Ms. Jean Butterfield, Director, LIFEguardianship Program, and a member of the Committee gave a presentation on the LIFEguardianship Program which is a nonprofit, corporate guardianship program administered under The Arc of North Carolina, Inc.

The LIFEguardianship Program grew out of the concerns of parents and family members for loved ones with mental retardation or other developmental disabilities. The Program uses large numbers of volunteers to provide guardianships of the person to individuals with mental retardation and other developmental disabilities. Ms. Butterfield indicated that she would be willing to explore expansion of the Program to include the provision of guardianship services to the elderly. LIFEguardianship is funded through both state funds and private contributions. Appendix F of this report includes an outline of Ms. Butterfield's remarks and handouts explaining the LIFEguardianship Program.

Following Ms. Butterfield's presentation, Mr. Frank Johns of the Corporate Guardianship Program addressed the Committee. Mr. Johns explained that the Corporate Guardianship Program was incorporated in 1979 following the recodification of the guardianship statutes in 1978. This recodification included a priority for guardianship appointments which placed corporate guardians ahead of public agency guardians whenever possible. The Corporate Guardianship Program is a nonprofit corporation providing guardians to the developmentally disabled and the elderly. The Program consists of volunteers and has guardianships in over 20 North Carolina counties. Mr. Johns explained that through the use of non-profit services, North Carolina could set up a guardianship program to serve the growing numbers of aged and developmentally disabled adults in North Carolina in need of guardianship services.

During Committee discussion, Chairperson Gottovi asked that at a future meeting the committee hear proposals from the LIFEguardianship Program on the possible expansion of their guardianship services. Representative Gardner also asked that the

Committee examine the use of Medicaid assistance to alleviate the growing problem of guardianship services in the State.

September 15, 1994

The Committee held its third meeting on September 15, 1994. Ms. Christine O'Conner Heinberg, Carolina Legal Assistance made brief comments to the Committee concerning guardianship and the mentally disabled. Ms. Heinberg stressed that very few mentally disabled individuals lack any capacity to make decisions concerning their life. For this reason, she asked that guardians and clerks of court consider less restrictive alternatives to guardianship before pursuing a guardianship proceeding. These less restrictive alternatives include: (1) appointment of a payee by a government agency to handle financial benefits; (2) establishment of a protective trust or a special bank account for a mentally disabled person; and (3) coordination of social habilitation advocacy services through a case manager. If guardianship is used, Ms. Heinberg asked that a limited guardianship plan be considered by family members and others and that the courts use multi-disciplinary evaluations before placing someone under guardianship.

Following Ms. Heinberg's comments, Ms. Suzanne Merrill, Assistant Chief, Adult and Family Services, Division of Social Services, Department of Human Resources presented an overview of the existing problems in the provision of guardianship services in North Carolina. Ms Merrill also offered for the Committee's consideration the

Department's recommendations to address these problems. These recommendations included: (1) the promotion of family members and other individuals to serve as guardians; (2) the development of private non-profit organizations to serve as guardians; (3) the appointment of county departments of social services as the only local human resources agency to serve as a public agent guardian; (4) the development of policies and protocols by the Division of Social Services to define conflicts of interest and outline steps to avoid such conflicts; and (5) the appropriation of adequate funding for county departments, with oversight from the Department of Human Resources, to meet increasing guardianship needs. Appendix G of this report contains a complete outline of guardianship issues and the Department recommendations as presented by Ms. Merrill. Appendix H contains an overview of North Carolina's program of guardianship services.

Ms. Jean Butterfield, Director, LIFEguardianship Program, Assistant Director, The Arc of North Carolina, presented information, as requested by the Committee, on a pilot project for expansion of the LIFEguardianship Program. The pilot project would provide guardianships of the person to adults with mental illness, substance abuse concerns, and difficulties resulting from aging. Currently, the LIFEguardianship Program serves only those adults with developmental disabilities. Ms. Butterfield explained that working in conjunction with the Life Plan Trust Program, the pilot project would also provide guardianship of the estate and representative payee services. Ms. Susan Hartley, Executive Director, Life Plan Trust Program, provided information concerning the Program's services. Appendix I of this report entitled LIFEguardianship Expansion Pilot Project Proposal contains a detailed description of the pilot project.

Following discussion by the Committee, Representative Gottovi asked committee counsel to develop a draft legislative proposal to the Committee implementing the recommendations of the Department and the proposed LIFEguardianship expansion pilot.

October 20, 1994

Following opening remarks by the Co-chairpersons, Mr. Dave Richard, Former Chairman and Budget Co-chairman, Coalition 2001, spoke to the Committee on issues of guardianship. Mr. Richard defined Coalition 2001 as a coalition of approximately 50 organizations who are concerned with issues of the developmentally disabled, mentally ill, and substance abusers. Mr. Richard expressed his concern that any legislation recommended by the Committee support the priorities in the statutes giving family members, individuals and non-profit corporations precedence over human resources agencies for guardianship appointments. He commented that the draft legislation to be presented to the Committee at this meeting does support these priorities, although more funding will ultimately be required enact the proposal.

Dr. Beth Melcher, Executive Director, North Carolina Alliance for the Mentally Ill, spoke to the Committee on guardianship as it relates specifically to the mentally ill. The Alliance for the Mentally Ill is a grassroots organization consisting of consumers, the mentally ill and their families and friends. She expressed concerns over the process by which any legislative proposal is developed, the areas of conflict of interest, the

quality of care and training, and the level of funding. She indicated that the draft legislation to be presented at the meeting meets some of her concerns and stressed that a memorandum of understanding between the Division of Mental Health and the Division of Social Services is critical to the success of the proposal.

Mr. Dennis Williams, Assistant Director for Medical Policy, Division of Medical Assistance, Department of Human Resources, spoke to the Committee on exploring options for Medicaid funding of guardianship services. Mr. Williams suggested that a Targeted Case Management Option offered the best chance of securing Medicaid funding. These case management services could be delivered through the local departments of social services. To secure such funding, the Department would need to complete the following tasks: (1) submit a State Plan amendment to the federal government for approval; (2) revise the interagency agreement with the Division of Medical Assistance and the Division of Social Services; and (3) train local staff and implement the program.

Ms. Katherine Hooks, North Carolina Psychiatric Association, also spoke to the Committee and expressed concern that the Department does not have adequate funding or time to devote to guardianship and is often times unresponsive to the problems of the mentally ill. In her opinion, an outside group or advisory board would be better to oversee guardianship services.

Mr. Tim Hovis, Committee Counsel, presented draft legislation to the Committee enacting the recommendations submitted by the Department at the last meeting. Following discussion by the Committee, the following changes to the legislation were approved by the Committee: (1) health departments were removed as guardians

effective July 1, 1995, not July 1, 1996; (2) statutory language was approved that requires Department budget requests to not be in conflict with statutory priorities for the appointment of a guardian; (3) language was approved that would allow counties which have established a successful guardianship program to receive State funds in addition to their current funding.

December 7, 1994

The final meeting of the Committee was held on December 7, 1994.

The Committee reviewed and edited the draft of the final report including the recommended legislation which is contained in Appendix J of this report. The Committee then approved the final report as amended.

FINDINGS AND RECOMMENDATIONS

The Legislative Research Commission's Committee on Adult Guardianship makes the following findings listed below.

* Due to various factors including the aging of the State's population, the maturing of children with developmental disabilities into adults, the need for guardians for the mentally ill, and the increase in persons with AIDS, the appointment of public agencies to serve as guardians has increased at an average rate of 20% per year over the past six years. This growth has created a crisis in the State in the need for guardianship services.

* The current statutory provision for appointment of a guardian, including the priority order giving preference to individuals and non-profit corporations over public agency guardians, should be maintained.

* Family members and other individuals who may be able to serve as guardians for incompetent adults face informational and other barriers in doing so and need assistance to overcome these barriers.

* The use of non-profit corporations to serve as guardians should be expanded.

* Area mental health authorities and local health departments find it inappropriate to continue serving as public agent guardians, and county departments of social

services, which have served 80% of this need, are willing to continue service as guardians.

* Funding has not been available to support the implementation of a system which promotes the appointment of individuals and corporations, or adequately provides for guardianship services from local human resources agencies.

Based upon these findings, the Committee makes the following recommendations to the 1995 General Assembly.

* Directors or assistants directors of local health departments and area mental health authorities should no longer be appointed as public agent guardians, but should continue to serve as guardians for existing appointments. With proper funding, county departments of social services should continue to serve as public agent guardians. (Sections 1, 2 and 3 of recommended legislation, Appendix J)

* The Department of Human Resources should develop procedures to handle and avoid conflicts of interest in the delivery of guardianship services. (Section 4 of recommended legislation, Appendix J)

* The Department of Human Resources should promote the use of family members, other individuals, and non-profit corporations as guardians and should provide training for family members and individuals as guardians. The Department should also provide information to guardians on resources available to them in meeting

the needs of their wards. The Department should also develop and distribute written materials on the filing of a petition for incompetence and the roles and responsibilities of guardians. Training and information should be administered through the Division of Social Services with written agreements as appropriate with other Divisions. Funding should be provided to accomplish these objectives. (Sections 4 and 6 of recommended legislation, Appendix J)

* Funding should be provided for grants to expand existing non-profit guardianship corporations and to develop new non-profit guardianship corporations. (Sections 5 and 6 of recommended legislation, Appendix J. Section 6 provides funding for administration of these grants, among other things.)

* Funding should be provided to county departments of social services to provide guardianship services. Counties should provide matching funds, however, before they are eligible to receive state monies. These funds should be administered through the Division of Social Services. (Sections 6 and 7 of recommended legislation, Appendix J.)

* The Administrative Office of the Courts, working with the Clerk of Courts Association, should educate the clerks on existing statutory provisions concerning guardianship and, if this committee's legislation is enacted, on information and training available through the Department of Human Resources.

APPENDIX A

HOUSE BILL 1319, 2ND EDITION

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1993".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1993 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

.

(25) Ways to Improve Guardianship Services (H.B. 451 - Gottovi)

.

Sec. 2.2. Committee Membership. For each Legislative Research Commission Committee created during the 1993-94 biennium, the cochairs of the Commission shall appoint the Committee membership.

Sec. 2.3. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1994 Regular Session of the 1993 General Assembly or the 1995 General Assembly, or both.

Sec. 2.4. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.5. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

PART XI.-----APPROPRIATION FOR STUDIES

Sec. 11.1. From the appropriations to the General Assembly for studies, the Legislative Services Commission may allocate funds to conduct the studies authorized by this act.

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PART XII.-----EFFECTIVE DATE

Sec. 12.1. This act is effective upon ratification. Part VI of this act is repealed on June 30, 1995.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1993

H

2

HOUSE BILL 451
Committee Substitute Favorable 5/6/93

Short Title: Guardianship Study.

(Public)

Sponsors:

Referred to:

March 22, 1993

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO
3 STUDY WAYS TO IMPROVE GUARDIANSHIP SERVICES.
4 The General Assembly of North Carolina enacts:
5 Section 1. The Legislative Research Commission may study ways and
6 means of improving the provision of guardianship services including increased quality
7 of services, the avoidance of conflicts of interest, the role of State agencies, the
8 coordination of services statewide, and the adequacy of staffing and funding.
9 Sec. 2. The Legislative Research Commission may make an interim report
10 to the 1993 General Assembly, 1994 Regular Session, and shall make a final report to
11 the 1995 General Assembly.
12 Sec. 3. There is appropriated from the General Fund to the Legislative
13 Research Commission the sum of fifteen thousand dollars (\$15,000) for the 1993-94
14 fiscal year and the sum of fifteen thousand dollars (\$15,000) for the 1994-95 fiscal
15 year to fund the Legislative Research Commission study authorized by this act.
16 Sec. 4. This act becomes effective July 1, 1993.

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1993 - 1994**

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Presentation to LRC Study Committee on Guardianship

By: Suzanne Merrill

January 26, 1994

Overall Framework for Presentation

- co-presentation between Tom Andrews, legal counsel for Administrative Office of the Courts (AOC) and Suzanne Merrill as co-chairs of the DHR/AOC Task Force on Guardianship.
- Tom will begin the presentation with background information/historical perspective on the development of the Task Force; and provide background on the current problem.
- Suzanne will describe the Task Force and its work as outlined below.
- Tom will end the presentation by identifying the responsibilities that need to be better defined and carried out to improve guardianship services; and the major issues that will need to be addressed by the LRC Study Committee.

I. Establishment of DHR/AOC Task Force on Guardianship

- A. **Appointed** in 1990, by Director of Administrative Office of the Courts (AOC) and Director of Division of Social Services of DHR.
- B. Co-chaired by Tom Andrews, legal counsel to AOC and Suzanne Merrill
- C. **Membership: 18 members**
 - 1. two directors of county DSSs
 - 2. a director and an assistant director of area mental health programs
 - 3. two public guardians
 - 4. a representative from the NC Corporation for Guardianship
 - 5. a representative from the Arc Lifeguardianship Program

These members (listed above) were chosen because they represented the primary providers of public guardianship services at the time the Task Force was developed. The remaining members of the Task Force included:

- 6. two clerks of superior court
- 7. a district court judge
- 8. one additional staff member of the Division of Social Services
- 9. two staff from the Division of MH/DD/SAS in the DHR
- 10. one staff member from the Division of Aging in the DHR

11. a representative from the area agencies on aging
 12. an assistant attorney general
 13. a representative from the Institute of Government
- Staff support for the Task Force provided by Division of Social Services staff
 - Limited number of hours of research provided by the Center for Aging Research and Educational Services, affiliated with the UNC-CH School of Social Work

II. Goals of DHR/AOC Task Force

Task Force adopted as its goal those concerns which grew out of Second Task Force which Mr. Andrews has described for you, which is to:

- A. Examine ways and means of providing public guardians for all incompetent adults in NC, especially low income adults, through a guardianship system which:**
 1. assures quality services
 2. is adequately staffed and funded
 3. is coordinated statewide
 4. avoids conflicts of interest
 5. includes service standards and accountability

III. Meetings and Issues Identified by Task Force

- A. Task Force met 9 times between November 1990 and February 1992.**
- B. Range of issues/problems identified by Task Force in initial meetings.**
- C. Highlight some of the more significant issues identified:**
 1. increasing need for guardianship services in NC; significant growth in the older adult population.
 2. complexity of needs of adults being served.
 3. inadequacy of resources, both public or private, available to provide guardianship services
 4. difficulty locating appropriate guardians, finding appropriate family members to serve.
 5. no funding for Disinterested Public Agent Guardians (DPAGs)
 6. lack of staffing for local human resource agencies serving as (DPAGs)
 7. training for DPAG's to understand responsibilities
 8. training and education for clerks of court

9. appropriate utilization of chapter 35A, guardianship statute
10. accountability and standards for guardians
11. dealing with conflicts of interest for local human resource agencies serving as DPAGs
12. assuring quality of services to incompetent adults; including monitoring/oversight of the program

IV. Task Force Approach to Dealing with Issues - 2 pronged approach

A. Short Term Strategies - use these strategies to deal with some of the issues on a more immediate basis

1. continue **required training** for DPAGs (powers and duties of guardians); have training address issues raised by Task Force that could be addressed through training
2. **bring key players together locally** as a multidisciplinary group (as Task Force had done as a state level group) to:
 - a. discuss same issues as Task Force, but at community level
 - b. clarify roles and responsibilities of local agencies and individuals
 - c. get community ownership of and solutions to problem

B. Long Term Strategies - these strategies would take more time to carry out and considerable research would need to be done

1. **Approach**
 - a. Talk to "**national experts**" on guardianship (8 contacted)
 - b. Examine guardianship **programs in other states**
 - c. Look at need for **guardianship in NC**
2. **Why long term strategies?**
 - a. give Task Force **overall perspective** of what's going on nationally and in NC
 - b. see how NC "**stacked up**" against other states; were our issues ones that other states had addressed, and, if so, what could we learn from them and use in NC to strengthen our guardianship program
 - c. this perspective would help Task Force recommend changes in overall system.

C. Findings from National Experts on Guardianship

1. Asked experts to id other states' guardianship programs that Task Force should look at; this information was taken into consideration when the Task Force identified a small group of other states' guardianship programs to study in more detail, which will be described shortly.
2. Asked experts to id trends in guardianship:
 - a. dramatic increase in past 10-15 years in states providing guardianship services
 - b. most typical approaches that states had taken:
 - (1) state system/approach, i.e., office of public guardian at the state level
 - (2) use of private nonprofit organizations by negotiating contracts
 - (3) extensive use of volunteers
 - c. more states are appropriating funds for guardianship services
 - d. greater awareness/recognition by states of potential conflicts of interest when public agencies serve as guardians
 - e. more emphasis on manageable caseload sizes and the need for quality services
 - f. placing more emphasis on accountability/oversight by either the judicial system or human services system
 - g. recognition that volunteers are more appropriate to extend or personalize services by guardians vs. serving as guardian (costs and turnover)

D. Guardianship Programs in Other States

1. Reviewed statutes in other 49 states; hear presentation on this research in a subsequent meeting
2. Found that several models/approaches generally being used; (states using one or combination of these)
 - (1) independent state office in executive branch of government, i.e., office of public guardian. (Alaska, Delaware, Vermont, N.J.)
 - (2) court model (judicially administered system); chief justice of state appoints public guardians (Hawaii), or chief judge of each judicial circuit establishes office of public guardian (Florida)

- (3) **human services agency model**; guardian in human services agency that provides services. (Maryland, under 65) (Minnesota, N.D.)
- (4) **county agency model**; establishes public guardian within counties, appointed by county government (Oregon) or chief judge of circuit court (Illinois)
- (5) **corporate/non-profit model**; contracts established with corporation(s) or other non-profit programs to provide services. (N.H., Florida, Indiana, Tennessee, Maryland (over 65).

E. Selection of States for In-Depth Study of Guardianship Programs

- 1. **Twelve states selected for in-depth study**
(Alaska, California, Delaware, Florida, Maryland, New Hampshire, Hawaii, New Jersey, New York, Tennessee, Vermont, Indiana)
- 2. **Rationale for selection of states based on several things:**
 - a. recommended by national experts as having good program
 - b. state statute indicated good public guardianship system
 - c. states' service delivery system like NC's, i.e., state supervised/ county administered
- 3. Studied these states' programs in terms of how programs addressed Task Force's goals for NC's guardianship system.

F. Findings from In-Depth Study

- 1. To assure **quality of services** some states:
 - a. utilize community professionals to provide oversight (Indiana, Maryland)
 - b. establish local advisory boards to assist with decision-making about needs of incompetent adults (Tennessee)
 - c. limit number of clients served (Tennessee (sets caps) and Vermont (sets caps))
 - d. distribute caseloads according to geographic regions within the state (N.H., Tennessee)
 - e. use volunteers extensively (Tennessee and Indiana)
- 2. To assure **adequacy of funding and staff** some states:
 - a. appropriate funds from legislature (N.H., Fla, Tennessee, Maryland, Indiana, Alaska)
 - b. charge a fee to non-indigent adults (N.H., Tenn, Maryland)
 - c. adequacy of staffing could not be determined from materials received from other states

3. To avoid conflicts of interest some states:
 - a. negotiate contracts with private, non-profit corporations to provide guardianship services (Indiana, Tenn, (AAA's)
 - b. establish strict policies on what constitutes a conflict of interest (Tennessee, Vermont, Indiana)

4. To address service standards and accountability some states:
 - a. have operations and procedures manuals which specify caseload size and service standards (Tenn, Vermont, Indiana, Fla, Maryland)
 - b. establish review boards to annually review all guardianship cases (Indiana, Maryland)
 - c. set-up multi-disciplinary boards to provide oversight of programs and funds (Indiana)
 - d. have written agreements with local human resource providers (N.H., eg., consent to treatment)

G. Need for Guardianship in NC

1. Examined the following areas to determine present and projected need for guardianship in NC:
 - a. population trends and projections, including number of individuals living alone
 - b. number of individuals in state psychiatric hospitals and MR centers
 - c. number of individuals in nursing and domiciliary homes
 - d. growth in number of wards covered under the DHR Blanket Bond

H. Findings at the Time Research was Done

1. Population trends and projections
 - a. reviewed 1990 census data
 - b. in 1990, 12.1% (804,341) of state's total population (6,628,637) was age 65 and over
 - c. of the 65+ group, 28.1% (226,384) of these people live alone
 - d. in 1990, 1.1% (69,969) of state's total population were 85 and over, the fastest growing age group
 - e. NC also has one of higher poverty rates in the nation for older adults; an estimated 19.5% of those 65 and older
 - f. projections for 2010 suggest a 32% growth rate in people age 65 and over (1,128,526 people)
 - g. projections for 2010 suggest that number of individuals 85 and over will have more than doubled (161,518 people)

- h. 2010 projections suggest 28.9% of 65+ population will live alone (325,477 people)
 - i. 2010 projections suggest more than 1/3 of 85+ population will live alone
 - j. caution; can't assume that everyone living alone will be without family (friends or that cognitively impaired, but gives us sense of what's on horizon)
2. Number of individuals in state psychiatric hospitals and MR centers
- a. task force conducted survey in June 1991 of hospitals and centers with help from Division of MH/DD/SAS
 - b. anticipate decreasing need for guardians in **MR centers**; total of 25 residents without guardians in MR centers
 - strong emphasis by centers to locate family, friends, or corporations to serve
 - requiring guardians upon admission to centers or within 3 months upon admission
 - c. anticipate increasing need for guardians in **state psychiatric hospitals**; total of 453 patients were potential candidates for guardianship
 - greater emphasis by facilities on treatment teams to identify patients who (are defacto) incompetent and need guardians
 - no family members to serve as guardians
 - backlog of difficult cases where patients need guardians and family unavailable/unwilling to serve
3. Number of individuals in nursing and domiciliary homes
- a. no definitive data available; nothing collected to give us this perspective
 - b. anecdotal data tells us there is a need
4. Data on # of wards served by DPAGs available through DHR Blanket Bond Data Base
- a. averaging 20% growth rate for each of past 5 years
 - b. currently 1,552 wards covered under the DHR Blanket Bond
 - 78% DSS (1,217 wards)
 - 21% Mental Health (325 wards)
 - 1% Health (10 wards)

I. Conclusion of presentation by Tom Andrews.

APPENDIX D

INTERAGENCY AOC/DHR TASK FORCE
ON
PROVIDING GUARDIANSHIP SERVICES FOR INCOMPETENT ADULTS

OUTLINE OF WORK TO DATE

This is an informal outline, prepared by the co-chairs of the task force; it has not been reviewed or approved by the full membership of the task force.

Contents

- A. Purpose of Task Force
- B. Appointment and Members
- C. Support and Proceedings
- D. Findings
- E. Conclusions
- F. The Need for a Legislative Study Committee or Commission

Outline

A. Purpose of the Task Force

To study ways and means of providing guardianship services for all incompetent adults in North Carolina, especially the indigent, through a system that assures quality of services, avoids conflicts of interest, is adequately staffed and funded, is coordinated statewide, and includes service standards and accountability.

B. Appointment and Members

1. Appointed in 1990, jointly by the Director of the Administrative Office of the Courts and the Director of the Division of Social Services of the Department of Human Resources.
2. Co-chaired by Legal Counsel to the AOC and the Branch Head of the Adult Services Branch of the Division of Social Services.
3. Members:
 - two county social services directors,
 - two area mental health directors,
 - two clerks of superior court,
 - a district court judge,
 - two public guardians,
 - two members of the staff of the Division of Social Services,
 - two members of the staff of the Division of Mental Health, Mental Retardation and Substance Abuse Services,
 - one member of the staff of the Division of Aging,
 - a representative of the Association of Area Agencies on Aging,
 - an assistant attorney general,

- a member of the faculty of the Institute of Government,
 - a representative of the Association of Retarded Citizens,
 - a representative of the Corporation for Public Guardianship.
4. A limited number of hours of research was provided by the UNC-CH Center for Aging Research and Education Services (CARES) under contract with DHR/DSS.
 5. Many other people provided information or opinions.

C. Support and Proceedings

1. The task force has proceeded without separate staff support or any specifically earmarked funding except for the contract research.
2. The co-chairs and members have served as a service to the public and the agencies and organizations by whom they are employed; they are not even reimbursed for travel or other expenses of attending meetings.
3. The task force met nine times between November, 1990, and February, 1992; subcommittees also met occasionally during this period.
4. Between meetings, the task force relied entirely on the efforts of its own members and the people on their office staffs, as well as the work done by CARES, to assemble information and develop tentative proposals.
5. The task force has:-
 - assembled information on the present and future guardianship needs of North Carolina's citizens;
 - studied numerous examples of the conflict of interest and other problems which have arisen in the use of human resource agencies as "disinterested public agent" guardians;
 - studied systems for delivering guardianship services which have been adopted by other states or recommended by national guardianship organizations or considered by Congress;
 - identified several alternative models which North Carolina might adopt in place of its present disinterested public agent approach.
6. The task force has not met since February, 1992, because of other demands on its co-chairs and its members, and because of the lack of staff and other support for further work; however, the task force has not disbanded or become defunct.

D. Findings

1. There is an impending crisis in providing guardianship services for incompetent adults in North Carolina, especially those who are indigent.
2. The causes of the crisis include:
 - the aging of North Carolina's population as people's life expectancies increase and North Carolina becomes increasingly attractive to retirees,

- the maturing of children with developmental disabilities into adults with special needs,
 - the range and variety of the needs of incompetent adults and of the options available for meeting those needs,
 - the increasing complexity and cost of the care required by incompetent adults,
 - an increasing public recognition of the need to guarantee that each guardian for an incompetent adult has the powers, abilities, information, resources, undivided loyalty and personal concern necessary to meet the needs of the ward.
3. Many incompetent adults, especially the indigent, are literally without any family or friends; even the most caring and concerned of relatives and friends are often unready, unwilling or unable to assume the responsibilities of personal guardianship care and decision making.
 4. Since 1978, North Carolina has relied on a "disinterested public agent" to serve as guardian of any incompetent adult for whom no individual or corporation can be found to serve; since 1987 North Carolina has required the court to make diligent efforts to find an appropriate individual to serve as guardian before appointing a disinterested public agent, but in every case the court must base the appointment of a guardian on the best interests of the ward; any disinterested public agent who is appointed by the court is authorized and required to serve.
 5. All state and local human resource agencies are "disinterested public agents" within the meaning of North Carolina's guardianship law; county social services agencies and area mental health agencies are most frequently called upon when the appointment of a disinterested public agent has been necessary; recently, county public health agencies have also been appointed in a few cases.
 6. North Carolina's reliance on disinterested public agents as guardians of last resort for incompetent adults is problematic because:
 - a. existing state and local human resource agencies often do not have one or more of staff, expertise, or other resources to assume general responsibility for the custody, or to make comprehensive provisions for the care, comfort and maintenance, of incompetent adults;
 - b. potential conflicts of interest are inherent in the general use of existing human resource agencies as guardians of the persons of incompetent adults; specific conflicts are arising with increasing frequency; as specific conflicts increase, concern about the inherent potential for conflicts of interest increases apace;

- c. the essential conflict of interest for any existing human resource agency is the conflict between the agency's central duty as a guardian to obtain the best and most suitable care for each of its wards, and the agency's equally central duty as a public agency to meet the needs of all the citizens whom it serves within the limits of its specific agency mission and budget;
 - d. potential and actual conflicts of interest can not always be adequately avoided or resolved so long as North Carolina continues to rely primarily on existing human resource agencies, as "disinterested public agents," to provide guardianship services for those incompetent adults for whom no relative or friend is ready, willing or able to serve as guardian.
7. The requirement that the court must use diligent efforts to find an individual or corporation to serve as guardian before appointing a disinterested public agent has the following effects:
- a. It takes the court out of its appropriate role in adjudicating cases and controversies and reviewing the performance of its appointees.
 - b. It places the clerk of superior court, as the judicial official responsible for appointing guardians, in the role of taking the initiative in attempting to persuade reluctant potential guardians to assume the responsibility.
 - c. When local human resource agencies are unwilling to serve, courts have even considered use of the coercive remedies provided by the law generally, in order to provide for the best interests of an incompetent adult.
 - d. No court wishes to use coercive remedies in dealing with local human resource agencies, especially when the reasons for the agencies' reluctance to serve are inherent in the present approach to providing guardians for incompetent adults, and not to any willfulness or lack of care and concern on the part of those agencies.
8. Many family members and potential volunteers are available and would serve as guardians in greater numbers if training and ongoing guidance and support were available to them.

E. Conclusions

- 1. North Carolina must develop and implement a better approach toward providing guardianship services for incompetent adults.
- 2. Among the responsibilities which must be undertaken under any new approach are:
 - the systematic recruiting of volunteers to serve as guardians of the person of incompetent adults who are without family or friends,

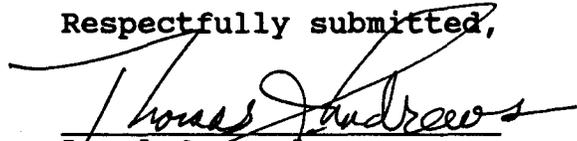
- the systematic training of volunteers and family members to serve as guardians,
 - assuming the responsibility for serving as guardian in those cases in which family, friends and volunteers can not be found to serve,
 - adopting and enforcing standards of quality and accountability for the care and other guardianship services received by incompetent adults,
 - administering whatever approach is adopted.
3. The most appropriate roles for a human resource agency in dealing with an incompetent adult have not been completely resolved; among the alternatives to serving as guardians for incompetent adults are:
 - providing services to incompetent adults as clients who are the wards of other persons, agencies or organizations with overall guardianship responsibility,
 - participating in the training of family members, friends, volunteers and employees of other organizations, to serve as guardians,
 - assisting guardians by identifying and evaluating the kinds of services available to meet the needs of their wards, and putting guardians in touch with those who provide the services.
 4. There is at present no one agency or type of agency, - public, private or non-profit, at the state, regional or local level, - which is in a position to assume the responsibilities which must be assumed under any solution to the current crisis in guardianship in North Carolina.

F. The Need for a Legislative Study Committee or Commission

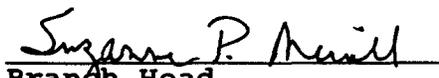
1. The task force has reached the limits of its ability, as an informal interagency task force, to complete its work.
2. In addition to its lack of staff support and funding, the task force does not have a broad enough perspective to develop specific recommendations for legislative consideration, or the authority to see them through to enactment.
3. In particular, a broader perspective is necessary to:
 - a. select from among the several possible solutions already identified by the task force, the solution or mix of solutions which best meets the needs of North Carolina's population of incompetent adults, and which can be administered efficiently and effectively,
 - b. assess the costs of implementing alternative solutions,
 - c. identify the state, local and private resources which can and should be marshalled to meet those costs, including state funds and local revenues,
 - d. determine the most appropriate allocation of responsibilities,

- among existing agencies and organizations and new ones,
 - among those which are public and those which are private or non-profit,
 - and among those at the state, the regional, and the local level,
- e. decide which state-level department or agency, if any, should have overall responsibility for implementing, administering or otherwise supervising the solution adopted.
3. The completion of the work of the task force requires a short term legislative study committee or commission, chaired by members of the General Assembly, with broad legislative, agency and public membership and adequate staff support.
4. The work of the task force to date has made it possible for a legislative study committee or commission to prepare a set of recommendations for the General Assembly in relatively short order; it is realistic to believe that such a committee or commission could do so by the opening of the 1994 "short session" of this General Assembly.

Respectfully submitted,



Legal Counsel,
Administrative Office of the
Courts



Branch Head,
Adult Services Branch
Adult and Family Services
Section
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Department of Human Resources

APPENDIX E

GUARDIANSHIP PROGRAMS IN OTHER SELECTED STATES



Prepared by the NC Division of Social Services
for the LRC Study Committee on Guardianship
April 29, 1994

7

INDEPENDENT STATE OFFICE MODEL

DELAWARE

I. DESCRIPTION OF PROGRAM

The Office of the Public Guardian is a statewide system established by the Delaware Legislature in 1973. A Public Guardian, who is an employee of the State of Delaware, is appointed by the Court of Chancery and serves at the pleasure of the Chancellor. Administratively, the Office of the Public Guardian is part of the Court of Chancery. The Public Guardian serves as guardian of the person or property or both for older and physically/mentally disabled individuals who are unable to properly manage their person and/or property and who are without family or friends to serve as guardians. The Public Guardian is guardian of last resort and is the sole public guardian for the state of Delaware. Very limited assistance is provided by the Office of the Public Guardian to private guardians seeking information about their duties and responsibilities.

II. ADEQUACY OF FUNDING AND STAFF

- Staff Configuration: Public Guardian
Deputy Public Guardian
1 full-time caseworker
2 half-time caseworkers
Administrative Officer
Accountant
- Funds are appropriated from the General Assembly to cover salaries and limited operating costs.
- Small staff size limits response to legal mandate to serve individuals needing a public guardian.
- Limited funding allows only one full-time and two half-time caseworkers which decreases ability to respond quickly to referrals for guardianship services.
- Continuing budget constraints indicate a continued limitation of guardianship services; approximately 2 out of 10 cases referred receive guardianship services; estimated unmet need for services is 500 individuals.
- Public Guardian is not a political appointment; MSW level education/training are required with strong administrative skills.
- Deputy Public Guardian and all caseworkers are MSW level staff.
- All staff, except Public Guardian, are hired by Public Guardian.

- Fees may be charged to non-indigent wards with the approval of the Court of Chancery.
- "Special Needs" Fund established by General Assembly in 1987 to care for ward on short-term basis until public assistance is obtained and/or property sold, at which time the Fund is repaid.

III. QUALITY OF SERVICES

- No mandated limitation on number of wards served; try to limit services to those individuals most "at-risk".
- Caseload size at discretion of Public Guardian.
- Comprehensive assessments conducted by caseworkers for all referrals for guardianship services.
- Comprehensive care plans established for all wards to address all needs.

IV. AVOID CONFLICT OF INTEREST

- Limited information available. When serving as guardian of the property, separate accounts must be maintained by the Public Guardian and funds cannot be interchanged.

V. SERVICE STANDARDS AND ACCOUNTABILITY

- No information available about service standards.
- Question and answer pamphlet available as public information about the Office of the Public Guardian.
- Individual accounts of wards are audited by the state auditor as are state funds used by the Office of the Public Guardian.
- Public Guardian bonded by State of Delaware (at the discretion of the Chancellor).
- Public Guardian must report annually to the General Assembly and the Court of Chancery about the overall operation of the Office, and report annually to the Court of Chancery when serving as general guardian or guardian of the estate.
- Public Guardian must account every 6 months to the Court of Chancery for guardianship of the person; must inform Court of major changes in each ward's situation and request continuation of guardianship.

INDEPENDENT STATE OFFICE MODEL

VERMONT

I. DESCRIPTION OF PROGRAM

The Office of Public Guardian is a statewide system established by the Vermont Legislature in 1988. Located in the Vermont Department of Aging and Disabilities, the Office provides guardianship services to people over 60 years of age for whom a suitable and private guardian cannot be found. Individuals for whom a guardian is appointed must be mentally disabled and unable to manage some or all aspects of their personal care or financial affairs. The Office may be appointed guardian for one or more of six separate areas (powers) pertaining to a ward's personal care, and financial affairs. Four of these areas of authority are related to financial matters, one concerns medical treatment decisions, and one addresses general supervision of a ward. The Office of Public Guardian serves as guardian of last resort.

The Office of Public Guardian is also available to provide information to the public and other organizations and facilities about guardianship and its alternatives, and to assist private guardians in understanding and carrying out their duties. The Office actively seeks members of the private sector to become guardians and provides orientation and follow-up to private guardians appointed for individuals previously served by the Office.

II. ADEQUACY OF FUNDING AND STAFF

Staff Configuration: Director, who also works as half-time guardian
4 half-time guardians

This configuration provides for a half-time guardian for each of the State's planning and service areas.

- Funds are appropriated by the State Legislature to cover salaries and limited operating costs.
- Due to budget constraints, the Office is currently limited to the Director and 2 half-time guardians.
- Commissioner of the Vermont Department of Aging and Disabilities employees individuals to serve as public guardians; public guardians are appointed by the Probate Court.
- Fees may not be charged to wards served by public guardians.

III. QUALITY OF SERVICES

- Limitations established on number of wards served; public guardians may serve no more than 10 wards per half-time position at any time.
- Director of Office of Public Guardian may choose to temporarily suspend acceptance of appointments or exceed caseload size based on emergency circumstances (must notify Probate Court when either of these situations occur).
- Priorities established to restrict appointments to only those necessary (e.g., situations involving abuse or neglect or situations requiring critical medical decisions).
- An Advisory Committee created to advise the Office of Public Guardian on its program.
- Appeals process available for wards who wish to appeal the action of a public guardian.
- Memoranda of Understanding in place with other state agencies to clarify roles and responsibilities.
- Wards Bill of Rights in place which is explained, as fully as possible, with all wards upon appointment.

IV. AVOID CONFLICT OF INTEREST

- A public guardian cannot commingle personal funds with the funds of a ward.
- A public guardian cannot sell a ward's real or personal property to himself, his spouse, other relative, agent, attorney, nor any corporation where the public guardian has beneficial interest.
- A public guardian cannot borrow funds from nor lend funds to a ward.
- A public guardian cannot serve as private guardian for anyone except a relative.
- A public guardian cannot serve as petitioner nor as a witness in an initial guardianship proceeding.
- No guardian, including a public guardian, may be employed by a residential facility where the ward resides.

V. SERVICE STANDARDS AND ACCOUNTABILITY

- Written program standards, procedures, and standardized forms in place which address the overall operation of the Office of Public Guardian, including conflict of interest, the wards' appeals process, bonding, duties and responsibilities of public guardians, frequency of visitation, securing medical treatment and authorizing services, etc.
- Public guardians are required to seek a second medical opinion and Probate Court approval before consenting to certain medical procedures and Probate Court approval before moving a ward to a more restrictive living arrangement.
- All guardians, including public guardians, must post a bond when serving as total guardian or guardian of the estate; Office of Public Guardian has established a Blanket Bond for this purpose.
- "Guardian's Handbook" available as public information to assist private guardians to understand the role and responsibilities of guardianship.
- All guardians, including public guardians, must account upon appointment and annually thereafter to the Probate Court regarding a ward's estate and his progress/condition.

INDEPENDENT STATE OFFICE MODEL

ALASKA

I. DESCRIPTION OF PROGRAM

The Office of Public Advocacy was established in 1984 by the Alaska Legislature to perform public guardianship functions. Previously these functions were carried out by the court system, but due to a concern about conflict of interest within the court system, the Office of Public Advocacy was created. The Office is located in the Alaska Department of Administration and serves as guardian of the person or estate or both. Assistance is provided by the Office to private guardians seeking information about their duties and responsibilities.

II. ADEQUACY OF FUNDING AND STAFFING

- Staff Configuration: Chief Public Guardian
4 public guardians in Anchorage
1 public guardian in Fairbanks
1 public guardian in Juneau
2 accounting/clerical staff
- Funds are appropriated from Legislature to cover salaries and some operating costs.
- All staff are state employees; chief public guardian responsible for hiring public guardians and accounting/clerical staff.
- Court visitors conduct assessments, arrange for multidisciplinary evaluations, do inventories, etc. prior to court proceedings to establish need for guardianship.
- Fees may not be charged by public guardians; consideration being given to charging fees as a way of increasing operating funds.
- Medicaid funding begun in FY 93-94 to reimburse for public guardians' time spent on arranging/coordinating medically related services for wards.

III. QUALITY OF SERVICES

- Currently no limitations on number of wards served; consideration being given to caps on caseloads; current caseload size approximately 85/public guardian; caseloads involve large geographic areas; chief public guardian carries small caseload.
- Proactive approach taken by public guardians to restore competency; find family members or other private guardians to serve; and to use alternatives to guardianship.
- Quarterly visits to wards required, but time and budget constraints sometimes limit visitation.

- Volunteers used extensively as support to guardianship program
 - 4 full-time Vista volunteers
 - 1 full-time Jesuit volunteer
 - 1 IRS volunteer to prepare tax returns
 - 2 high school students
 - 8 college students/interns per year
 - older adult volunteers funded under Title V of Older Americans Act
 - volunteers performing community service
- Frequently use other community professionals to assist in monitoring adequacy of wards' care and treatment.

IV. AVOID CONFLICT OF INTEREST

No information available.

V. SERVICE STANDARDS AND ACCOUNTABILITY

- Limited accountability/quality control for Office of Public Advocacy.
- Policy and procedural manual still in "draft" form.
- Limited access to Chief Public Guardian by other public guardians for consultation/technical assistance on cases.
- Requiring a bond is at the discretion of the Court; typically public guardians are not required to post bond.

HUMAN SERVICES AGENCY MODEL

MARYLAND

I. DESCRIPTION OF PROGRAM

The Public Guardianship Program was established by the Maryland Legislature in 1977. State law mandates that the director of the local department of social services serve as guardian of the person for adults less than 65 years of age and that the director of the Office on Aging (state or local) be appointed for adults 65 years of age and older. In both situations, these human services agencies serve as the guardian of last resort. Individuals for whom a guardian is appointed must be physically or mentally disabled, and due to the disability, be unable to make or communicate responsible decisions concerning their person and/or property and affairs. The Program is coordinated statewide by the Maryland Department of Human Resources and the Maryland Office on Aging via a memorandum of understanding defining the respective agencies' roles and responsibilities. Guardianship appointments are limited to guardian of the person only for directors of offices on aging and local departments of social services. Guardians of the property are limited by statute to individuals, trust companies, and other corporations authorized to serve in this capacity. Information and assistance is provided to private guardians, the general public, and other agencies and organizations about the duties and responsibilities of guardians.

II. ADEQUACY OF FUNDING AND STAFF

- Directors of local departments of social services and offices on aging (state and local) serve as guardians.
- Guardianship Program Coordinators are designated to manage the guardianship program in offices on aging.
- Volunteers are used by offices on aging as "friendly visitors", to provide telephone reassurance, and for "life enrichment".
- Funds are appropriated by the State Legislature to cover salaries and some operating costs; additional, limited county funds supplement the state appropriation.
- Fees may not be charged by public guardians (guardians of the estate may charge fees, however).

III. QUALITY OF SERVICES

- Limitations on number of wards served; ratio of 25 cases/case manager.
- Case managers in local departments of social services and offices on aging are responsible for assessing the services needed, the development of service plans, access and coordination of services provided, and periodic reassessment of the plan;

ultimate responsible for decisions about the wards' care rests with the human services agency directors as the appointed guardian.

- Legislatively established statewide review system (Maryland Adult Public Guardianship Review Board System) to review each public guardianship of the person in a Board's jurisdiction at least once every six months.
 - 9 member voluntary boards appointed by county commissioners (includes physicians, human services agency professionals, attorneys, public health nurses, advocates).
 - Boards' authority is advisory only.
 - Make recommendations to Circuit Court whether guardianship should be continued, modified, or terminated.
 - Boards typically act as advisors to social services and office on aging case managers and assist in management of guardianship cases.
 - Wards are to be present at Review Board hearings, whenever possible, and always represented by an attorney at the hearing.
 - Difficulties with Review Board System include scheduling hearings when a quorum is available to review increasing members of guardianship cases; frequent turn-over in Board membership due to volunteer status of Review Board; and locating attorneys to represent wards at the hearings.

IV. AVOID CONFLICT OF INTEREST

No information available. Potential for conflict exists between the guardian of person and guardian of property based on statutory provisions granted to each type of guardian to "perform the services, exercise discretion, and discharge duties in the best interest of the disabled person."

V. SERVICE STANDARDS AND ACCOUNTABILITY

- Written program standards, procedures, and forms in place which address overall operation of the Public Guardianship Program, including duties and responsibilities of public guardians, frequency of visitation, securing medical treatment, authorizing services, emergency access to services, maintenance of records, etc.
- Public guardians must file an annual report with the Circuit Court and a semi-annual report with the Review Board (see above) regarding each ward, progress and condition.
- Requiring a bond is at the discretion of the Circuit Court (guardian of the property only); corporate guardians and guardian estates not exceeding \$10,000 are exempt by statute from furnishing a bond.

HUMAN SERVICES AGENCY MODEL

TENNESSEE

I. DESCRIPTION OF PROGRAM

The Public Guardianship for the Elderly Program was established by the Tennessee General Assembly in 1986. This statewide program is administered by the Tennessee Commission on Aging. Guardianship services are provided to persons 60 years of age and older who, due to physical and mental limitations, are unable to meet essential requirements of their physical health or to manage essential aspects of their financial resources, and have no family member, friend, bank or corporation willing and able to act on their behalf. A District Public Guardian is appointed in each of the nine planning and service areas of the state to develop and implement the Program. District Public Guardians can serve as guardian of the person, the estate, or both and are appointed as guardian of last resort. Volunteers are used extensively to provide additional support and assistance to the Program. Information and assistance is provided to private guardians, the general public, and other agencies and organizations about the duties and responsibilities of guardians.

II. ADEQUACY AND FUNDING AND STAFF

- 9 full-time District Public Guardians
- Case managers hired by District Public Guardians to assist in carrying out guardianship responsibilities.
- Trained volunteers assist with performance of some of the duties and powers of the District Public Guardians.
- Funds are appropriated by the General Assembly to cover salaries and operating costs.
- Fees may not be charged by District Public Guardians for indigent wards (indigent under Supplemental Security Income Guidelines); District Public Guardians may charge fees to non-indigent wards; \$35/hour fee established for services provided by District Public Guardians.

III. QUALITY OF SERVICES

- Maximum caseloads determined by District Public Guardians by considering the number and type of cases served, extensiveness of care required, total hours spent on caseload and number of pending cases.

- Documentation submitted by District Public Guardians to State agency for final approval of caseload cap; State agency notifies Court about cap and when it is removed.
- District Public Guardians must recruit and train volunteers to assist in the Program.
- Proactive approach taken by District Public Guardians to find family or other private guardians to serve and to use alternatives to guardianship.
- Coordination agreements in place with other agencies and organizations to clarify roles and responsibilities.
- Advisory Committees established in each district to advise the District Public Guardians about the Program and to assist in decision-making about wards.
- Mandatory training in place for all District Public Guardians.
- Short and long range care plans established for all wards.

IV. AVOID CONFLICT OF INTEREST

- A District Public Guardian cannot commingle personal or program funds with the funds of a ward.
- A District Public Guardian cannot sell a ward's real or personal property to himself, his spouse, other relative, agent, attorney, nor any corporation where the District Public Guardian has beneficial interest.
- A District Public Guardian cannot accept gifts from a ward during the provision or after the termination of services.
- A District Public Guardian cannot solicit any cases; nor petition the Court for appointment as guardian.
- A District Public Guardian serving as guardian ad litem for a respondent cannot be appointed as guardian for that ward.

V. SERVICE STANDARDS AND ACCOUNTABILITY

- Written program standards, procedures, and standardized forms in place which address the overall operation of the Public Guardianship for the Elderly Program, including conflict of interest, bonding, duties and responsibilities of District Public Guardians, frequency of visitation, securing medical treatment and authorizing services, etc.

- District Public Guardians are required to seek a second medical opinion and Court-approval before consenting to certain medical procedures and Court approval before moving a ward to a more restrictive living arrangement.
- Blanket Bond established to cover District Public Guardians (and emergency back-up staff) when serving as guardian of the estate or general guardian; where a ward's liquid resources exceed \$25,000, bonding costs are paid from the estate.
- Annual accountings to the Court are required by the District Public Guardians for all types of guardianships.
- Individual accounts of wards are audited annually by the state auditor.

CORPORATE MODEL

NEW HAMPSHIRE

I. DESCRIPTION OF PROGRAM

New Hampshire has a statewide public guardianship and protection program which is designed to provide the services of guardian of the person and/or estate when there is no relative, friend, or other interested person available, willing, and able to serve. Guardianship may be provided through contract with one or more organizations approved by the New Hampshire supreme court. The statewide contract is managed by the Department of Health and Welfare and has been with the Office of the Public Guardian, a private nonprofit corporation, since 1979. Services are provided to non-indigent persons on a fee for service basis with the fee established by the contract. As of April, 1991, 700 people across the state are being served through the program.

II. ADEQUACY OF FUNDING AND STAFF

- The contract fixes costs and allows for subcontracting.
- The estates of non-indigent wards may be billed for "reasonable compensation" according to the statute.
- The program is staffed by 19 people which includes: a director, an assistant director, 3 secretaries, and 3.5 positions for money managers. The remainder of the staff are professional guardians: master's level social workers and attorneys.
- The caseload size is from 50 to 60 and has remained stable within this range. Caseloads are distributed geographically.
- Volunteers are not used in the program as they are believed to be more expensive than professional staff.

III. QUALITY OF SERVICES

- A policy on withholding or withdrawing of medical care has been developed.
- The statute provides for a functional assessment of each proposed ward to ensure that evidence is available to support the ward's lack of ability to provide for his basic needs, or manage his affairs. The statutes also requires the least restrictive form of intervention to be used, and allows for limitations to be placed on the guardian's powers.

IV. AVOID CONFLICT OF INTEREST

- The statutes prohibit any agency providing care and custody of an incapacitated person from serving as guardian. However, an agency employee may serve as guardian if he or she does not provide direct care to the proposed ward and the

court finds that the appointment of this employee would not present a "substantial - risk of conflict of interest". It is unclear from the materials we have, but assumed based on this section of law, that the agency contracted to provide guardianship does not provide "care and custody" or other services which could pose a conflict-of-interest for the agency in acting in the best interest of the ward.

V. SERVICE STANDARDS AND ACCOUNTABILITY

- Standards such as "least restrictive form of intervention" are laid out in statute.
- Accountability is to the probate court. Annual accountings are due for guardianship of the estate and biennial reports for guardian of the person.
- Bond is required for all types of guardianship, but the judge may waive this request if estate is less than \$2,500 or, if guardianship is of the person.

CORPORATE MODEL

INDIANA

I. DESCRIPTION OF PROGRAM

This is a statewide program providing guardianship of the person and/or estate for indigent, incompetent adults. It is designed to be the last resort and the ward must demonstrate the inability to purchase guardianship services from private sources.

A state-level multidisciplinary Advisory Board develops rules, disburses state funds, and monitors problems. Partial funding is provided and basic organizational and program standards are set by a state agency; in this case, the Department of Human Resources. DHR also provides staff support to the Advisory Board, and field staff to provide program consultation, monitoring and evaluation of programs. Services are delivered through a regional system of programs.

Local services are provided by existing not-for-profit corporations which have demonstrated accountability and adherence to basic minimum standards. Programs are required to have in place policies and procedures which guard against conflict of interest and must establish local Guardianship Committees. Local programs must apply for this position by responding to requests for proposals (RFPs) sent out by the Department of Human Resources. In 1991 it was predicted that the program would serve 1,625 persons in first biennium (1/4 of total need).

II. ADEQUACY OF FUNDING AND STAFF

- The state provides 75% of the funding, and the local programs are expected to generate the other 25% through public, private and in-kind funds.
- The ratio of wards to one professional staff person is set at 40 to 1.
- No information was available regarding staffing of local programs. These programs are permitted to use volunteers to expand the capacity of professional staff to a 100 wards to 1 staff person ratio.

III. QUALITY OF SERVICES

- Caseload sizes are set to allow staff to develop a one-on-one relationship with the ward.
- Individual service plans are required for each ward.

IV. AVOID CONFLICT OF INTEREST

- Policies and procedures to guard against conflicts of interest must be in place in each local program.

- Agencies providing residential services cannot be appointed as guardian.
- Assessments to determine the need for guardianship are done by agencies other than the agency which provides guardianship services.

V. SERVICE STANDARDS AND ACCOUNTABILITY

- Rules are set by the State Advisory Board and monitored by the State Department of Human Resources.
- Local Guardianship Committees review each case no less than once per quarter.
- An independent financial audit is submitted annually to the State Advisory Board.
- A comprehensive evaluation of the program is submitted annually.

JUDICIAL MODEL

HAWAII

I. DESCRIPTION OF PROGRAM

The Office of Public Guardian is established by state statute. The public guardian is appointed by the chief justice and the office is located in the judicial branch. The public guardian may serve for any person for whom a guardian is needed and appointment is made by the family court. In addition to the duties of guardianship for incapacitated individuals, the public guardian is required to assist the court in other guardianship matters; advise and give information to persons, agencies, or corporations seeking or serving as guardians; develop public education materials on alternatives to guardianship; and encourage development of private guardians willing to provide guardianship of the person.

II. ADEQUACY OF FUNDING AND STAFF

- Funding is provided solely by the state and is part of the continuation budget of the judiciary.
- The public guardian may receive fees as the court allows, however, these fees are deposited in the general fund and do not become part of operating budget of the public guardian's office.
- No information was available on adequacy of staffing.
- Contracts may be established to enable the public guardian to properly and expediently carry out his duties.

III. QUALITY OF SERVICES

- The public guardian is required to establish rules.
- The public guardian is to be appointed as a last resort when individuals, corporations or agencies are unable to serve.
- Annual reports on the status of each ward are to be made to the court having jurisdiction over the appointment of the guardian.
- The public guardian is to make decisions which are in the ward's best interest.

IV. AVOID CONFLICT OF INTEREST

- The public guardian is prohibited from accruing funds from guardianship fees.

V. SERVICE STANDARDS AND ACCOUNTABILITY

- Visits to the ward are required to be made as often as necessary.
- Coordination with other professionals and agencies is required to ensure the needed services and resources are provided to the ward.
- Annual reports to the court are required.
- The public guardian is charged with the responsibility to maintain a support system which respects the ward's dignity and best interest.
- The public guardian is required to explore the use of guardianship alternatives and seek least restrictive living arrangements.

JUDICIAL MODEL

FLORIDA

I. DESCRIPTION

The chief justice of each judicial circuit is authorized to establish an office of public guardian for that district.

II. ADEQUACY OF FUNDING AND STAFF

- No costs may be reimbursed from the ward's estate.
- State appropriations fund each office. The public guardian is required to prepare a budget to be submitted to the chief judge of the circuit, for inclusion in the courts' legislative budget request.
- No specific information was available on staffing. The ratio of wards to guardian is 40 to 1.
- The public guardian is permitted to contract for services and to use volunteers.

III. QUALITY OF SERVICES

- The public guardian is authorized to develop and adopt procedures to assure the efficient conduct of the ward's affairs.
- Staff must consist of professionally qualified individuals (attorneys and masters' level social workers) in each office.
- There is a requirement to actively search for family, friends or others to serve as guardian.
- The guardian is required to make four visits per year to each ward.

IV. AVOID CONFLICT OF INTEREST

- The Office of Public Guardian cannot provide services other than guardianship. A nonprofit corporation may be appointed as public guardian if it does not provide any other services.
- The public guardian cannot hold any other public position, or any position which would create a conflict of interest.
- The public guardian cannot recover costs from the assets or income of the ward.

V. SERVICE STANDARDS AND ACCOUNTABILITY

- The standards which are required by statute and are therefore consistent statewide, are: maintain records, disclose personal and medical records only with authorization, report on efforts to locate other guardians, a biennial audit, and 4 visits per year by professional staff.
- More detailed standards are set by each office and vary depending on the procedures adopted by each office. There is no consistency in these standards across the state.

*Working with and for People with Mental Retardation
and other Developmental Disabilities*

PRESENTATION OUTLINE TO THE
LEGISLATIVE RESEARCH COMMISSION
COMMITTEE ON ADULT GUARDIANSHIP

THE Arc OF NORTH CAROLINA
LIFeguardianship PROGRAM
BY: JEAN FARMER BUTTERFIELD
APRIL 29, 1994

- I. Opening Remarks
- II. Brief Description of Arc/NC
- III. History & Purpose of LIFeguardianship Program
- IV. Overall Program Structure (see chart attached)
 - (A) Arc/NC General Members and Board
 - (B) LIFeguardianship Council = Standing Committee of Board & governing body of program
 - (C) Council Subcommittees = (1) Protege Review, (2) Policy, (3) Public Education, (4) Nomination, (5) Training, and (6) Endowment.
- V. Program Description
 - (A) Individuals/Population Served and Current Number
 - (B) Where proteges live
 - (C) Staffing pattern
 - (D) Breakdown of Regions/Areas (see map attached)
 - (E) Role of Guardianship Specialist
 - (F) Role of Volunteer Coordinator Consultants
 - (G) Volunteers - Personal Representatives and Personal Partners
 - (H) Proteges
- VI. Referral Sources and Process (see back of Program Structure Chart)
- VII. Funding Sources
 - (A) Department of Human Resources (allocated by General Assembly)
 - (B) Arc/NC
 - (C) Protege Fees
 - (D) Donations
 - (E) Endowment (firm financial base for program, in future years)
- VIII. Internal System of Accountability/Quality Improvement
- IX. Questions and Response
- X. Conclusion

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LIFeguardianship Program
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Formerly the Association for Retarded Citizens/North Carolina, Inc.





***Working with and for People with Mental Retardation
and other Developmental Disabilities***

Speech Narrative

on

LIFeguardianship Program

of

The Arc of North Carolina, Inc.

INTRODUCTION

The LIFeguardianship Program is under the auspices of The Arc of North Carolina, Incorporated, (Arc/NC). The Arc/NC is a statewide, non-profit corporation whose overall purpose is to improve the quality of life for all persons with mental retardation. The association began in 1952 and is composed of approximately 5,000 parents, professionals, and interested citizens in 50 local chapters throughout the state.

BACKGROUND

The Arc/NC amended its corporate charter, on file with the Secretary of State's Office, in 1984 to act as a corporate guardian under relevant North Carolina laws. The primary purpose for this amendment was to respond to a common concern of every parent: "What will happen to my son/daughter after I'm gone?" This question is especially difficult for parents whose family member has mental retardation or another developmental disability. These parents often have worked very hard to help their family member reach a certain level of independence - an independence that could be lost without continued support and guidance.

Prior to developing the LIFeguardianship Program, the Arc/NC conducted a survey which revealed that as many as 500 people required these services. In 1991, a second survey was done and it revealed that approximately 1300 individuals with developmental disabilities were in need of a guardian.

PROGRAM DESCRIPTION

The Arc/NC LIFeguardianship Program, developed and implemented in 1984, is designed to provide guardianship of the person for individuals/proteges 18 years and up with mental retardation or other developmental disabilities. Services are currently being provided to 175 individuals throughout the state. Individuals receiving services live in group homes, nursing homes, psychiatric hospitals, (John Umstead, Butner, Cherry or Murdoch), in their own communities, or in Regional Mental Retardation Centers like Caswell, O'Berry, Murdoch, Western Carolina, and Black Mountain.

(Over)

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Guardianship Specialists are based in each of the four areas in the State (refer to map enclosed). These Specialists provide case coordination and management services on behalf of each individual served. Their primary role is to ensure that the needs of each individual served are being met. Primary responsibilities include obtaining and giving consent for medical treatment, medications (i.e, Dilantin, Lithium, Mellaril, etc.), programming and residential services as well as attending Annual Habilitation/Interdisciplinary Team Meetings on behalf of each individual served.

Volunteer Coordinator Consultants are contracted with by the LIFEguardianship Program or are hired through local Arc Chapters, to work part-time recruiting and training volunteers. Once trained, these volunteer personal representatives and/or personal partners provide one-to-one friendship/companionship, guidance and support to each individual protege served in the program. (Refer to organizational chart.)

Funding

Funding is provided to the LIFEguardianship Program through public and private sources. First, the N.C. Department of Human Resources provides the majority of the funds used to operate the program. These funds are appropriated by the N.C. General Assembly to the Department. A second source include contributions made by individuals, organizations, and businesses to help with operating cost. Third, are program fees from (wards) proteges served who have a source of revenue. A fourth source is interest generated from a LIFEguardianship Endowment Fund, and the fifth and final source is supplemental funds from The Arc of North Carolina. These funds are used as a last result, when all other sources do not cover the cost for services.

The total budget projected for fiscal year 93-94 (July 1, 1993 through June 30, 1994) is \$335,800.00. This figure includes total cost, direct and indirect (i.e. administrative overhead).

The LIFEguardianship Endowment is a restricted fund set aside to ensure that the program will be able to provide a firm financial base for itself in future years. The principal funds in the Endowment are invested and are not used. Interest however, generated on the principal is used annually to help cover operating cost.

ARC/NC LIFEguardianship PROGRAM STRUCTURE

ARC/NC Membership (5,000)

ARC/NC Board (30)

LIFEguardianship (23)
Council

Executive Director (1)

Committees:
Policy, Protege Review,
Public Education,
Nominations,
Training

Associate Director (1)
Director of the LIFEguardianship Program

Guardianship Specialists
(Full-time Equivalent Positions = 5)

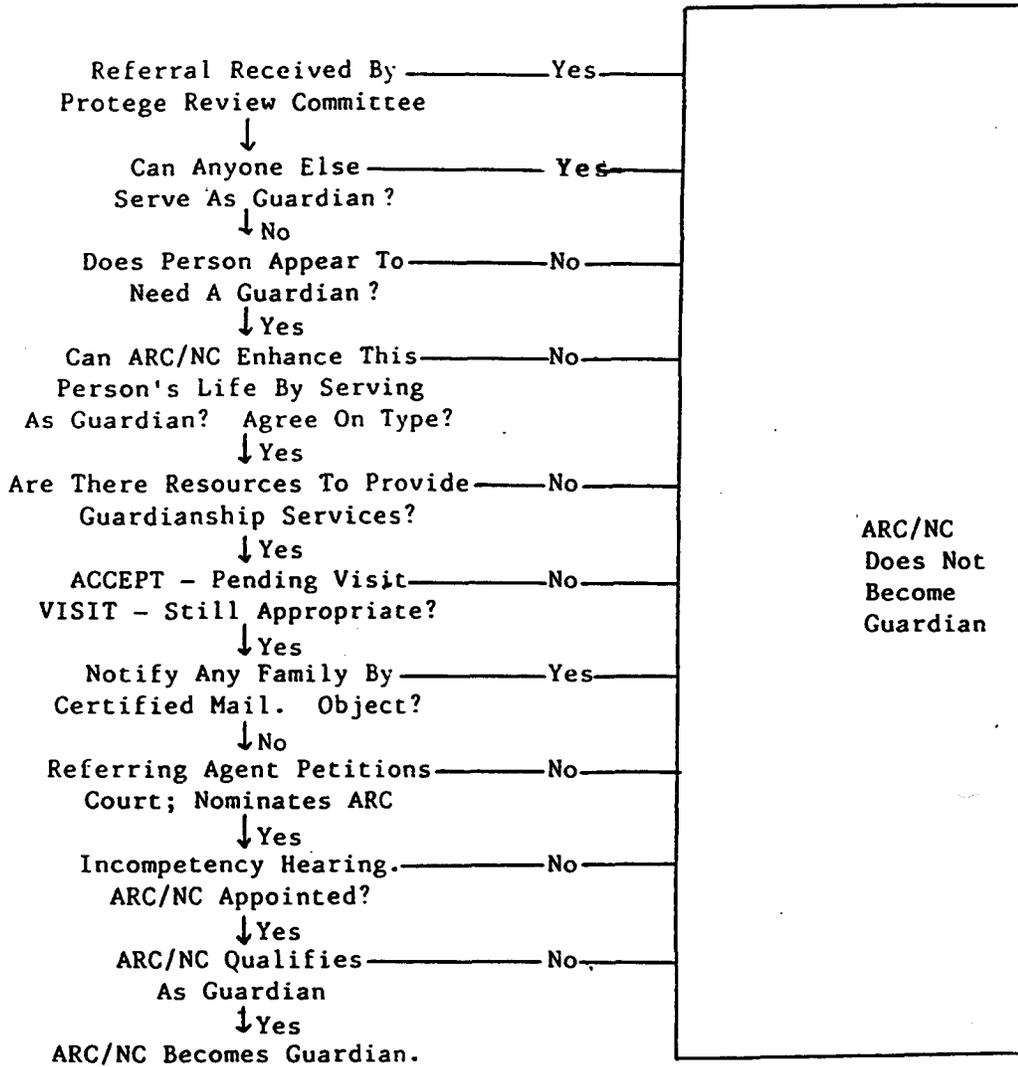
Local ARC and Consultant
Contractual Agreements

Local Volunteer Coordinators
(Part-time Positions = 9)

Volunteer Personal Representatives
and Personal Partners

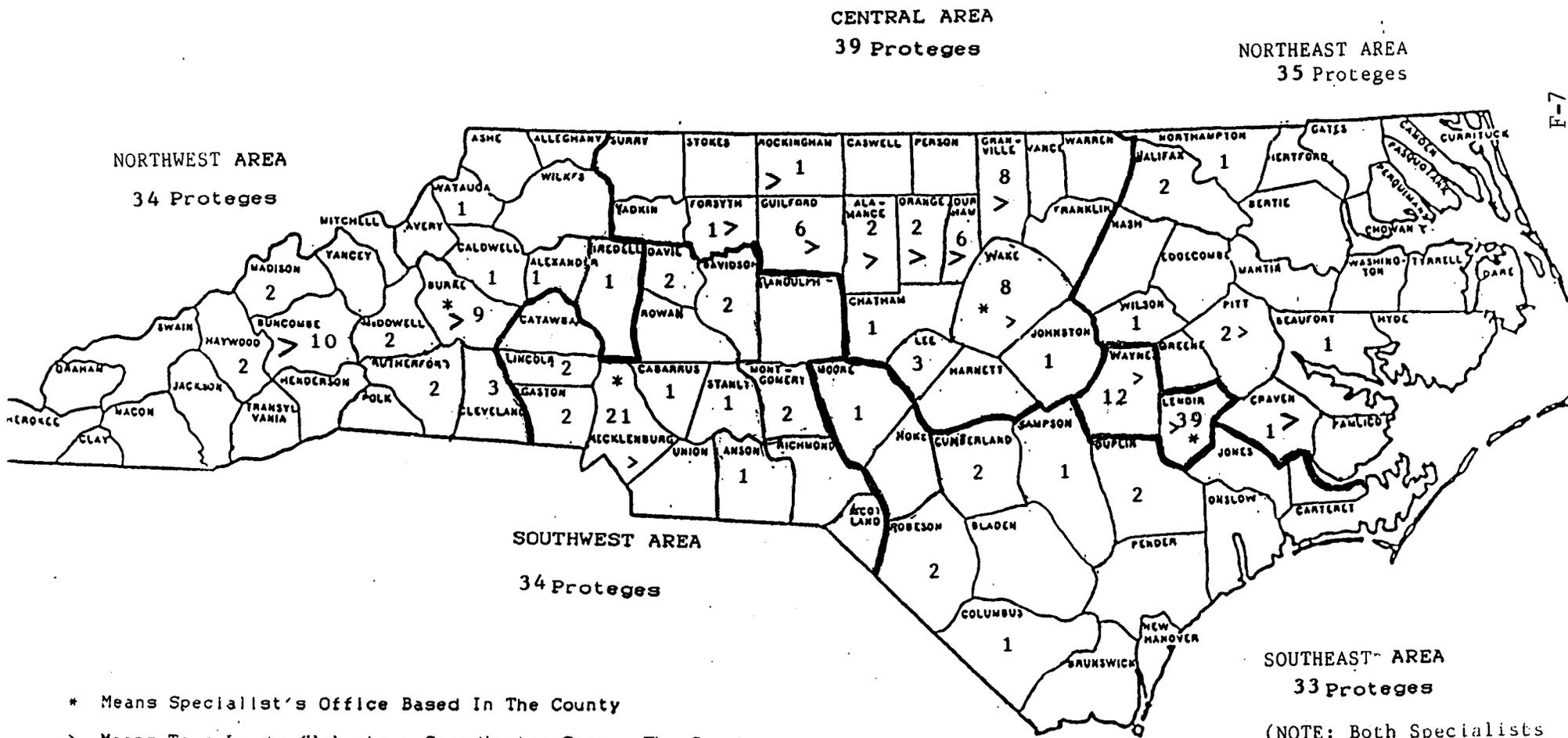
Proteges

CHART II - ADMISSIONS PROCESS



Revised: 1/27/94

MAP OF LIFEguardianship PROGRAM AREAS



Protege Sites by Regions and Counties Currently Served
(As of March 27, 1994)

Central Region

Alamance County
 Mebane Family Care Home
 Ralph Scott Group Home
 Chatham County
 Chatham Group Home
 Durham County
 RHA Group Home
 Voca Group Homes
 Forsyth County
 Knollwood Hall Nursing Home
 Granville County
 Murdoch Center
 Guilford County
 Guilford Co. Group Home
 RHA Group Homes
 Sue Lynn Residential Center
 The Evergreens, Inc. (Nursing Home)
 Johnston County
 Voca Group Home
 Lee County
 Voca Group Home
 Moore County
 Caswell Group Home
 Ridgefield Group Home
 Rockingham County
 Rouses Group Home
 Wake County
 Dorothea Dix Hospital
 Educare Community Living Group Home
 Hillcrest Family Care
 PC Contracts Group Home
 Voca Group Homes

Southwest Region

Cabarrus County
 Eudy Group Home
 Davidson County
 Arc Group Home
 Davie County
 Twinbrooks Group Home
 Gaston County
 Ivey Home
 Meeds Road Group Home

Lincoln County
 Lin Dak Group Home
 Sunnyhill Group Home
 Mecklenburg County
 Alternative Family Living - Charlotte
 Brian Center Nursing Home
 Howell's Child Care Center
 Mecklenburg Autistic Group Home
 Residential Support Services
 St. Mark's Center
 St. Mark's Group Home
 Voca Group Home
 Montgomery County
 Montgomery Co. Group Home
 Stanley Residential
 Randolph Co.
 Brook Stone Haven
 Stanly County
 Chivington Group Home

Northeast Region

Beaufort County
 Ridgewood Manor
 Craven County
 Life Inc.
 Halifax County
 SCI - Roanoke House
 Lenoir County
 Caswell Center
 Howell's Child Care Center
 Life Inc.
 Northampton County
 Woodland Group Home
 Pitt County
 Rosa Bradley Home for Adults
 Skill Creations
 Spruill's Family Care Home
 Wayne County
 Cherry Hospital
 Wilson County
 Skill Creations
 Wilson-Green MH Group Home #2

Southeast Region

Carteret County
 Life Inc.
 Columbus County
 Fair Bluff Group Home

Cumberland County
 RHA Group Home
 Duplin County
 SCI - Kenansville
 Lenoir County
 Caswell Center
 Moore County
 RHA Group Home
 Robeson County
 RHA Group Homes
 Sampson County
 Foster Home
 Wayne County
 Lamb's Group Home
 Nova Group Home
 O'Berry Center
 Sutton Rest Home

Northwest Region

Alexander County
 ComServ Group Home
 Buncombe County
 Black Mountain Center
 Mountain Area Residential Facilities
 Blue Ridge RHA - Swannanoa
 Burke County
 Alternative Family Living
 Western Carolina Center
 Caldwell County
 ComServ Group Home
 Cleveland County
 Yeltons Family Care
 Young Street Group Home
 Haywood County
 Boundary St. Group Home
 Meadowood Group Home
 Iredell County
 RHA Group Home
 Community Living Concepts GH
 Madison County
 Blue Ridge RHA - Mars Hill
 McDowell County
 Alternative Family Living - Marion
 E. Court Group Home
 Rutherford County
 Tri City Group Home
 Watauga County
 Mountain Rest Home

Association for Retarded Citizens/North Carolina, Inc.

JOB DESCRIPTION

Job Title: Guardianship Specialist
Program: LIFEguardianship Program

Major Function: Employee is responsible for case coordination and liaison activities to the ARC/NC LIFEguardianship Program. Work involves travel to facilities where proteges reside. Work is performed under the guidance and supervision of the LIFEguardianship Program Director, and in accordance with the policies of the program.

Illustrative Examples of Work

- Coordinates and follows up on protege referral process
- Provides information and materials to the Protege Review Committee regarding referrals, decisions and updates and serves as liaison between the committee; protege and/or staff member(s) involved with protege
- Attends court hearings and qualifies on behalf of the Association when named as guardian
- Attends Habilitation Plan (IPPs, IEPs, IHPs, etc.) meetings on behalf of proteges
- Reviews Habilitation Plans (IPPs, IEPs, IHPs, etc.) for each protege, quarterly
- Contacts facility social workers re: protege needs and progress
- Completes annual status reports for submission to the Clerks of Court on behalf of the proteges
- Performs follow-along for proteges and advocates to assure that their individual programmatic, residential and personal needs are being met in the least restrictive environment possible
- Records information about each protege in confidential client files
- Assists with recruitment of team leaders in assigned region
- Trains volunteer personal representatives
- Coordinates duties of team leaders as applicable, provides consultation and technical assistance/support or direct supervision, where appropriate
- Maintains log and monitors team leaders activities
- Provides information and presentations/speeches about the services of the LIFEguardianship Program to individuals and groups (agencies, organizations, etc.)
- Develops new and expands existing sites within the assigned region

- Serves as staff to ARC/NC and LIFEguardianship committees as assigned: coordinates committee activities
- Maintains program data and statistics, as needed, for region
- Performs other duties and responsibilities as may be assigned

Knowledge, Skills, and Abilities

- Knowledge of the needs of persons with mental retardation
- Knowledge of social work principles, techniques, practices and their application to individual problems
- Ability to express ideas clearly and concisely, both orally and written, and to plan and execute work effectively
- Experience in the use of computers, or willing to learn
- Experience in providing clerical support and managing an office
- Work within prescribed regional budget
- Ability to work independently

Acceptable Training and Experience

- Graduation from a four year college or university with a degree in the field of social work, special education, or other field related to mental retardation; or, graduation from a four year college or university in an unrelated field and two years experience in special education, social work, or guidance; or an equivalent combination of training and experience

**The Arc of NORTH CAROLINA
LIFeguardianship Program Budget
(FY 93-94/July 1, 1993 - June 30, 1994)**

Sources of Revenue:

State MH/DD/SAS	\$250,050.00
Endowment Int. & Contrib Protege Fees	<u>85,750.00</u>
TOTAL	\$335,800.00

	TOTAL	MH/DD/SAS	Arc/NC
SALARY RELATED EXPENSES:			
Salaries	181,147.00	161,809.00	19,338.00
Fringe Benefits	39,484.00	36,538.00	2,946.00
TOTAL SALARY RELATED EXPENSES	220,631.00	198,347.00	22,284.00
PROGRAM RELATED EXPENSES:			
Arc Admin Cost	35,124.00	0.00	35,124.00
Audit	1,600.00	0.00	1,600.00
Insurance	1,300.00	0.00	1,300.00
Professional Fees	22,592.00	13,092.00	9,500.00
Dues/Subscriptions	500.00	0.00	500.00
Supplies	7,800.00	4,000.00	3,800.00
Printing	1,200.00	0.00	1,200.00
Telephone	12,500.00	11,000.00	1,500.00
Postage	1,500.00	1,500.00	0.00
Office Space	9,141.00	6,000.00	3,141.00
Travel/Staff	29,000.00	16,111.00	12,889.00
Travel/Volunteer	3,500.00	0.00	3,500.00
Training/Staff	1,200.00	0.00	1,200.00
Prog Dev/Endwmt	2,500.00	0.00	2,500.00
Equip Maint/Rpr	900.00	0.00	900.00
Miscellaneous	1,000.00	0.00	1,000.00
TOTAL PROGRAM RELATED EXPENSES	131,357.00	51,703.00	79,654.00
TOTAL LIFeguardianship EXPENSES	351,988.00	250,050.00	101,938.00



**DEPARTMENT OF HUMAN RESOURCES
GUARDIANSHIP POSITION PAPER**

North Carolina is currently experiencing a crisis in guardianship due to the growing need for guardians to be appointed for indigent older and disabled adults who have no one able to serve as their guardian, and limited public resources to meet this need. Under the provisions in G.S. 35A, the state statute governing guardianship, the Clerk of Superior Court can appoint, in the following priority order, (1) an individual such as a family member or friend; (2) a corporation; or (3) a disinterested public agent, which is defined as the director or assistant director of a local human resources agency, to serve as guardian for an adult who has been adjudicated incompetent. Currently, directors and assistant directors of county departments of social services, area mental health programs, and local health departments are serving as disinterested public agent guardians.

In many cases families are unable or unwilling to serve as guardians, and corporations are not always available because they are limited by the populations they serve or by the geographic areas where they provide services. At the same time, an increasing number of older and disabled adults are being identified as needing a guardian. As a result, the courts are finding an increased need to appoint a disinterested public agent guardian to properly manage the affairs of these indigent wards. The public agencies have become overwhelmed by this increasing responsibility because they do not have the staff capacity to handle it, which may leave vulnerable incompetent adults without the benefit of a legal guardian. The appointment of public agencies to serve as guardians began to significantly increase in the late 1980's and has grown at an average rate of 20% per year for the past six years.

North Carolina's current system of guardianship, when compared with similar systems in other states, is a good one. However, some improvements to the current system are needed to enable all guardians to better meet the needs of incompetent adults. The role of the state should be to assist families, corporations and disinterested public agents carry out their responsibilities for guardianship. Providing adequate resources is key to this assistance. The following is a listing of problems with the state's current guardianship system for indigent adults, possible solutions to these problems, and estimated costs for these solutions. The following information is being considered for long range solutions and is not included in any legislative proposals nor in the expansion budget for the governor's review.

1. Problem:

Many family members are unable or unwilling to serve as guardians of incompetent individuals. This is often due to erroneous

assumptions by family members about the roles and responsibilities of the guardian. For example, family members often feel that they will be personally responsible for the ward's financial needs if they are appointed guardian. Families are also worried about what guardianship requires of them and that the ward cannot exercise any decision making power once declared incompetent. Even when family members are willing to serve as guardians, the costs of attorney fees are prohibitive for many and discourage them from becoming involved.

Solutions:

- A. Promote the appointment of family members and other individuals as guardians.** In order to promote more family members and individuals to serve as guardians, training should be provided on the roles and responsibilities of a guardian. Also, written materials such as brochures and booklets should be developed and distributed to make individuals aware that older and disabled adults may need to have guardians appointed and the possible role of family members in this process.

The Division of Social Services is currently providing training regarding the powers and duties of guardians for all disinterested public agent guardians and their staff who provide case management services for the wards. This training should be adapted to promote family members and other individuals to pursue guardianship when necessary, and should provide information on how to file a petition for incompetence, help family members and individuals to understand the scope and limitations of guardianship, and understand their responsibilities once they are appointed guardian. The Division of Social Services should develop and conduct this training for family members and individuals and develop and distribute the written materials.

- B. Options should be explored for families who cannot afford the cost of attorney fees.** Alternatives to costs for attorneys, such as a list of attorneys who would assist with guardianships on a pro bono basis, should be developed. The North Carolina Bar Association could assist with this. Options for families to be assisted by Legal Services agencies should also be considered. Currently, Legal Services does not help families with petitions for guardianship.

Costs:

The cost to print 100,000 (1,000 for each of the 100 counties) informational brochures is estimated to be \$4,300 (\$.0430 per copy), and

the cost to print 100,000 booklets on guardianship is estimated to be \$25,000 (\$0.25 per copy). Total cost: \$29,300.

It is estimated that 30% of the time of the Program Consultant II position described under "Costs" on page 9 would be needed to develop and conduct guardianship training for family members.

2. Problem:

Limited availability of private non-profit corporations to serve as guardian. Currently there are three corporations in the state, the LIFEguardianship Program, the Life Plan Trust Program, and the Corporation for Guardianship which are chartered to provide guardianship services. These three organizations have some limitations on the populations they will serve, such as only serving developmentally disabled adults. Also, they do not have services available in all counties in the state, and can serve a limited number of individuals.

Solution:

Promote the development of additional private non-profit organizations and expansion of existing programs to serve as guardians. This can be accomplished through demonstration projects designed to test models of service delivery especially to underserved populations, such as persons with severe and persistent mental illness, by appropriating funds from the General Assembly for up to six demonstration projects to develop effective service delivery models. These models may include expansion of existing corporate guardianship programs or the development of new programs.

Costs:

\$1,080,000 (\$180,000 per demonstration project, based on 6 projects). This is based on the original appropriation given to the Lifeguardianship Program of ARC.

3. Problem:

Differing opinions by human services agencies on serving as disinterested public agent guardians. The three local human services agencies which are currently appointed as guardians by the Clerk of Superior Court have differing opinions about whether they should be required to serve in this capacity. County directors of social services believe that serving as a guardian is an appropriate role for them. They are accustomed to helping individuals and families in a variety of

conditions and situations with a range of activities, many of which are needed by wards. Such assistance includes helping with living arrangements, arranging for or helping with money management, serving as representative payee, and other related activities. Area mental health directors are more accustomed to providing specific treatment services for people with mental illness, developmental disabilities or substance abuse problems. They believe that it is a conflict of interest for them to serve as guardian while simultaneously providing treatment services to the same individual. County health directors have had very limited experience serving as guardians and do not want to act in this capacity.

Solutions:

- A. County departments of social services should continue to serve as disinterested public agent guardians. Area mental health and local health departments should not serve as disinterested public agent guardians. This can be accomplished by amending General Statute 35A-1202. This solution is feasible only if the funding identified in Problem #4 is made available.
- B. The Division of Social Services should develop policies and protocols which define conflict of interest situations, outline steps for county departments of social services providing guardianship to take in avoiding conflicts, and provide training on these policies and protocols. See the Program Consultant II position described under "Costs" on page 9.
- C. Develop other alternatives/resources to support the provision of quality guardianship services by:
 - promoting and training family members to serve as guardians (see problem/solution #1); and
 - expanding the number of private non-profit organizations which can serve as guardians (see problem/solution # 2).

Costs:

The county departments of social services cannot take on this additional responsibility without adequate funding. If funding is not available, then no statutory changes should be made and the existing human services agencies (including county departments of social services, area mental health programs, and local health departments) will need to continue serving as guardians. The crisis in guardianship for these agencies will continue and solutions other than the one proposed in A. above will need to be found.

4. **Problem:**

Increased demand for guardianship services from public agencies which do not have adequate funding and staffing to meet this need. At the end of FY 93-94, public agencies served as guardians for 1,669 wards in the state. Approximately 78% of these appointments are held by directors of county departments of social services, 21% are held by directors of area mental health programs, and 1% are held by directors of local health departments. The appointment of public agencies to serve as guardians has increased at an average rate of 20% per year over the past six years. This growth is expected to continue to increase due to:

- **The aging of the state's population:** The most current census information indicates that there are 841,893 adults in the state 65+ years of age and 77,218 who are 85+ years of age. It is estimated that by the year 2010 there will be 1.2 million adults 65+ years of age and 209,085 adults 85+ years of age in the state. Of these individuals, many will experience dementia or other mental impairments which limit their ability to make decisions for themselves. Those who have not preplanned for this by establishing a power of attorney or health care power of attorney, will likely need a guardian appointed. Those who are indigent will likely need a public agency to provide guardianship.
- **The maturing of children with developmental disabilities into adults with special needs:** It is estimated that between 4% to 4.5% of the state's total population of 6,836,977 has a developmental disability (approximately 307,664 individuals). This estimate includes persons with traumatic head injuries received as a result of automobile, boating and other accidents, which impair their mental functioning.
- **The recognition of the need for persons with severe and persistent mental illness to have a guardian appointed:** Even though by state law (G.S. 122C-203) involuntary commitment to a psychiatric hospital in no way affects incompetence proceedings, a survey conducted in 1991 on behalf of the DHR/AOC Task Force on Guardianship documented that approximately 38% of the adult mentally ill persons in the state psychiatric hospitals had guardians. Of the 973 people who had been adjudicated incompetent and had guardians appointed, 750 had family members or corporations appointed as guardians and 182 had disinterested public agent guardians. The survey also revealed that almost 500 other adult residents in the state psychiatric hospitals were identified as being

at high risk of being unable to make informed decisions at the time of the survey. It appears that many adults whose psychiatric condition may limit their capacity to make informed decisions are at extremely high risk of requiring incompetence proceedings and appointment of guardians. Since many of these individuals have no family members who are actively involved, it is likely that a large proportion of these at risk individuals may need guardianship services from a local human services agency.

- **The need by long term care and acute care facilities to have guardians appointed to consent to medical treatment for residents/patients:** Currently there are 37,707 beds in licensed nursing facilities; 25,000 beds in licensed domiciliary facilities, and 22,094 beds in acute care facilities. Many of the individuals needing services from these facilities are at risk of being unable to make decisions about their treatment, and do not have family members who are able or willing to make these decisions. Facilities are under increasing pressure to have treatment authorization given by a legally responsible person when the patient /resident is unable to make decisions. It is likely that many of the individuals in these facilities will need guardianship services from a local human services agency.
- **The limited availability of family and friends or private non-profit corporations to serve as guardians:** Refer to problems #1 and #2.
- **The increase in the number of persons with HIV/AIDS:** Current census data indicates that 4,742 individuals in the state have been diagnosed with HIV and 4,900 individuals in the state have been diagnosed with AIDS. An estimated 1,000 new HIV cases are reported each year. Patients with AIDS frequently experience dementia in the later stages of the disease, which seriously limit mental functioning.
- **The increase in the numbers of adults with estates which need to be protected or managed once they become incompetent.** Approximately 20% of the current guardianship appointments made to human services agencies involves estate management. Many of these estates are small (less than \$15,000) and are not difficult to manage. However, some estates exceed \$50,000, and the numbers of wards with these larger estates, who have a local human services agency appointed as guardian, are increasing.

Current funding is not adequate to carry out existing responsibilities and definitely not adequate to meet the growing need for guardianship that the state will experience. Agencies are being forced to serve more clients without funds to cover the cost of services. In some instances agencies will no longer be able to take on the responsibility for wards without reimbursement for costs. This leaves indigent incompetent adults without a resource for guardianship. Funding is needed for adequate numbers of trained staff who can provide case management services for guardianship cases.

Solutions:

- A. Provide adequate funding and staffing for county departments of social services to provide quality services and meet the increasing need for guardianship. Additional funds are needed to support the cost of social work staff who provide direct services to wards.

- B. Continue Department of Human Resources oversight, within the Division of Social Services, of the current guardianship system and expand the capacity to fully manage this program statewide. A new administrative structure at the state level is not needed to provide guardianship services for the state's incompetent individuals. It would be an expensive and unnecessary use of public funds to develop a whole new structure when the basic components of an effective system already exist.

An additional Program Consultant II position is needed within the Division of Social Services to carry out increased responsibilities resulting from the growth in the numbers of wards appointed to public agencies, the increased need for consultation because of the complexity of the situations these appointments present, and the additional responsibilities taken on by the Division as a result of this proposal. The Program Consultant position would be responsible for the development and delivery of additional training needed by family members and other individuals serving as guardian on the roles and responsibilities of being a guardian; the development and delivery of more specialized guardianship training for staff in county departments of social services; the development and distribution of booklets and brochures; the development and/or coordination of other public information activities; and the development of policies and protocols which define conflict of interest and conducting the accompanying training. This position would also oversee the implementation of the demonstration projects designed to develop effective models for service delivery by private non-profit organizations.

- C. **Alternative methods for obtaining consent to health treatment should be explored.** For some wards, especially those with mental illness that results in intermittent incompetence, the need for guardianship arises due to a medical crisis and the competence of the individual to consent to treatment is questioned. Alternatives similar to a health care power of attorney should be considered to allow these adults to name another individual who can make decisions for them during periods of incompetence.
- D. **Options should be explored to limit the appointment of county departments of social service as guardian for wards with large estates.** A statutory change to limit the appointment of county departments of social services as guardian of the estate should be considered for estates involving larger amounts of funds.

Costs:

- A. At the end of FY 93-94 local human resources agencies had provided guardianship services to 1,669 wards. Of these, 1,302 were served by county departments of social services. The average annual cost of this service for the county departments was \$1,068.50 per ward, for a total annual cost of \$1,391,187.00. This represents 22.4 hours of service per ward per year, or an hourly cost of \$47.70.

A recent study of the guardianship program in county departments of social services revealed that an average of 25.75 hours of service per ward per year are needed to adequately meet the needs of these wards. Using the rate of \$47.70 per hour of service, and 25.75 hours of service, the average cost per ward would be \$1,228.00 per year.

Applying this figure of \$1,228.00 to the 20% projected rate of growth in this program, and assuming that county departments of social services become the only public agency responsible for this service beginning with FY95-96, it is estimated that county departments of social services will serve 2404 wards at an annual cost of \$2,952,112.00 during FY95-96. In FY96-97 it is estimated that county departments of social services will serve 2,885 wards at an annual of \$3,542,780.00.

The \$1,391,187.00 spent on guardianship services by county departments of social services during FY93-94 and in previous years is primarily Social Services Block Grant funding which is capped. (A very small amount of

Medicaid At-Risk Case Management Services and all county funds is used for this service). The Social Services Block Grant is the only federal funding source for all of the Adult Services programs provided by county departments of social services. In order to meet the growing needs and to provide quality services to wards, an additional \$1,560,925.00 will be needed in FY95-96. An additional \$2,151,593.00 will be needed in FY96-97.

One possible source of funding to meet this additional cost is At-Risk Case Management Services funded by Medicaid. Currently, 51 county departments of social services are providing this service to eligible individuals. Case management services to incompetent adults who meet the eligibility criteria for this service are an allowable activity under At-Risk Case Management Services. The current Medicaid match rates are 65.14% federal share and 34.86% for the non-federal share. The 34.86% non-federal share is currently provided by the counties. No state funds have been appropriated to cover the state's share of the non-federal match. County departments of social services are having considerable difficulty fully funding the non-federal share in order to maximize these federal Medicaid funds.

It is estimated that 10%, or 240 of the 2,404 wards to be served in FY95-96 could be covered under At-Risk Case Management Services at a total cost of \$294,720.00. The federal match would be \$190,713.00 (using the FY 94-95 FMAP rate of 64.71%), of the total cost. The non-federal share would be \$104,007.00. Likewise, the cost of service to 10%, or 289, of the 2,885 wards to be served in FY96-97 would be \$354,892.00 (using the FY 94-95 FMAP rate). The federal share would be \$229,650.00 and the non-federal share would be \$125,242.00.

Of the remaining 1,031 wards not covered by SSBG or Medicaid to be served in FY95-96, a state appropriation of \$1,266,068.00 will be needed. Of the remaining 1,463 wards to be served in FY96-97, a state appropriation of \$1,796,564.00 will be needed. The total state appropriation needed for FY95-96 is \$1,370,075.00, and the total state appropriation needed for FY96-97 is \$1,921,806.00. These total figures include the non-federal share for At-Risk Case Management Services.

Other funding options under Medicaid should be explored.

- B. To establish one additional Program Consultant II position within the Division of Social Services would cost \$42,710.00. This covers salary and fringe benefits.

Total Funds Needed:

FY95-96 \$1,412,785.00

FY96-97 \$1,964,516.00

HUMAN SERVICES AGENCY MODEL

NORTH CAROLINA

I. DESCRIPTION OF PROGRAM

Under the North Carolina guardianship statute, the Clerk of Superior Court has the authority to appoint an individual, such as a family member or friend; a corporation; or a disinterested public agent (the director or assistant director of a local human resources agency) to serve as guardian for an adult who has been adjudicated incompetent. Currently, local human resources agencies include county departments of social services, area mental health programs, and local health departments. Incompetency is defined as the lack of sufficient capacity to manage affairs or the inability to make and communicate responsible decisions concerning person, family or property.

Disinterested public agents serve as guardians by virtue of their office or employment. When their employment terminates, their successor in office becomes the guardian. These individuals can serve as guardians of the person, the estate or as general guardians.

The Department of Human Resources has administrative responsibility for the oversight of the disinterested public agent guardianship system, and is responsible for issuing administrative rules; providing training, consultation, and technical assistance; and managing the bond for disinterested public agents. Within the Department, the administrative responsibility for oversight and management of this system has been delegated to the Division of Social Services.

II. ADEQUACY OF FUNDING AND STAFF

- There are no state or federal funds specifically designated for the support of guardianship services.
- Local human resources agencies do not have adequate funding or staffing for the provision of this service.

III. QUALITY OF SERVICES

- Training is required for all disinterested public agent guardians and is provided by Division of Social Services staff.
- Disinterested public agent guardians are required to have contacts with their wards at least once every 90 days.
- Disinterested public agents are required to allow wards to exercise independent decision-making and assume as much responsibility and independence as is reasonable.
- Disinterested public agents are required to file status reports for guardianship of the person, with a designated agency. The designated agency must review the report and may help the guardian in the performance of his duties to the ward, petition the court to have the guardianship modified, or have the guardian removed if this is indicated.
- The Division of Social Services provides on-going consultation and technical assistance to guardians and to case managers on individual cases handled by local departments of social services. When necessary assistance is provided to local departments of social services to help them make needed changes or corrections in the delivery of guardianship services.
- All guardians are required to seek the least restrictive living arrangement for wards.

IV. AVOID CONFLICT OF INTEREST

- Prior or subsequent to the appointment, the disinterested public agent guardian must inform the Clerk of Superior Court if his role, or his agency's role in relation to the ward, would constitute a conflict of interest.
- The guardian can not commingle the wards funds.
- The guardian must get court approval to sell the ward's real property, or to sell personal property in excess of \$1,500.00.

V. SERVICE STANDARDS AND ACCOUNTABILITY

- Department of Human Resources Administrative Rules are established for disinterested public agent guardians. For example, these rules require the disinterested public agent guardian to see the ward as frequently as needed, but not less than once every 90 days.
- Disinterested public agent guardians are required to file annual status reports on the condition of the ward with the designated agency/clerk for guardianship of the person, and annual accountings related to the ward's assets for guardianship of the estate.
- Bond coverage is required for disinterested public agent guardians whether they serve as guardians of the person, the estate, or as general guardians.
- Disinterested public agent guardians are required to petition the court for restoration to competency when wards no longer appear to be incompetent.

The Arc of North Carolina

LIFEGuardianship Expansion Pilot Project Proposal

BRIEF HISTORY AND CURRENT PROGRAM DESCRIPTION

The LIFEGuardianship Program under the auspices of The Arc of North Carolina, Incorporated (formerly the Association for Retarded Citizens/North Carolina) provides guardianship services for adults with mental retardation and other developmental disabilities. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, spina bifida, and severe head injuries/brain damage or a combination of these (e.g. mental retardation and cerebral palsy).

The LIFEGuardianship Program was developed and implemented in 1984, after The Arc of North Carolina amended its charter with the Secretary of State in order to become corporate guardian for individuals who had no family member or friend able or willing to assume such responsibility.

The specific roles of The Arc/NC in relation to Guardianship may include, but are not limited to, guardian, conservator, custodian of funds, representative payee, surrogate parent, personal advocate, estate planner, trustee of funds and monitor of services for wards/proteges. The responsibility of assuring the proper legal, administrative, and individual rights and welfare of the person that The Arc/NC becomes guardian for by court appointment, is delegated to a volunteer LIFEGuardianship Council. The Arc/NC through the LIFEGuardianship Council, however has only been able to assume the role of guardian of the person to date, due to lack of financial resources to expand its services.

JUSTIFICATION OF NEED

Prior to the LIFEGuardianship Program being developed, a needs assessment survey (1983) was done. The survey revealed that approximately five hundred (500) individuals with mental retardation were in need of services, and due to medical technology (e.g. increased life spans) this number was expected to continuously grow.

The LIFEGuardianship Program is currently serving as guardian of the person for 179 wards/proteges, in 43 different counties throughout the state. It also serves as processing agent for 9 out of state guardians. Services are currently limited, not only in terms of serving only the developmentally disabled adult population, but due to the lack of being able to offer financial management services.

Thus, individuals with severe, chronic and persistent mental illness, substance abuse concerns, nor the elderly are now being served by the program unless they also have a developmental disability. Guardian of the estate nor representative payee services are offered.

In 1992, a second needs assessment survey was conducted in coordination with the Division of Mental Health/Developmental Disabilities/Substance Abuse Services and the Division of Social Services, both of the N.C. Department of Human Resources.

The survey was mailed to all forty-one (41) Area Mental Health/Developmental Disabilities/Substance Abuse Programs and the one hundred (100) County Departments of Social Services. Staff in both of these local agencies (Mental Health and Social Services) were asked to coordinate with each other in completing the surveys to avoid duplication of data. Based on this factor, some of the seventy-one (71) survey forms returned included only one (1) survey being completed for both local agencies.

The data basically revealed the following: (A) 1,290 adults with developmental disabilities had no guardian of the person and needed one, (B) 377 adults with developmental disabilities had no guardian of the estate and needed one, (C) a total of 1,051 individuals with mental illness either needed a guardian of the person, or had a disinterested public agent (Social Services or Area Mental Health) as guardian of the person, (D) a total of 162 individuals with mental illness either needed a guardian of the estate, or had a disinterested public agent as guardian of the estate, and (E) of these last two totals, 417 individuals with mental illness either needed a general guardian or had a disinterested public agent assuming this responsibility.

Participants also indicated that their first choices in terms of preference for a guardianship model or options in N.C. was first that of an individual, second that of a private non-profit corporation, and third was public guardians.

This was most interesting since the Guardianship Statute in North Carolina, gives first legal priority for a guardian to that of an individual, second to that of a Corporation, and third to that of a disinterested public agent, such as Social Services or Mental Health.

The survey did not indicate how many individuals with substance abuse concerns nor the elderly were in need of guardianship services unless they were also developmentally disabled or had a mental illness.

A former Guardianship Task Force under the leadership of the Administrative Office of the Courts and the Division of Social Services, and most recently an Adult Guardianship Committee of the Legislative Research Commission have both expressed a positive response to the Corporate Guardianship model of The Arc of North Carolina, however it needs to be expanded in scope to address the needs of a broader population of individuals as well as offer a wider range of services.

PILOT PROJECT DESCRIPTION

The Arc of North Carolina LIFEguardianship Program, using its current model, shall provide guardianship of the person to adults with developmental disabilities, mental illness, substance abuse concerns, and the elderly. The pilot project would be conducted from July 1, 1995 through June 30, 1997 in the Central Region of North Carolina (see map attached with Central Region/Area shaded).

Guardianship of the person services, during the initial fiscal year (FY 95-96) of the pilot, are projected at a minimum of 30 and maximum of 40 adults with disabilities (e.g. developmentally disabled, mentally ill, substance abusers and the elderly). The second fiscal year (FY 96-97) a minimum of 40 and maximum of 50 individuals are projected to be served. During the duration of the entire pilot project, services as processing agent for five (5) out of state guardians will be provided. These figures are projections due to the fact that the actual number of individuals served have to be contingent upon the diverse challenges each protege presents while providing person-centered/ individualized case management and coordination, as well as geographic locations.

Referrals to the program would be received from several sources, including personnel from Area Mental Health Programs, local Departments of Social Services, the Regional Psychiatric Hospital, Regional Mental Retardation Center, Medical Facilities, Clerks of Court, as well as family members and other agencies or programs providing services to the developmentally disabled, mentally ill, substance abusers and the elderly in the central area.

The LIFEguardianship Program, through its volunteer Protege Review Committee shall screen all referrals for guardianship of the person and make a decision as to whether to provide

or deny services based on its eligibility requirements. The referral source shall then be notified, and if the individual is approved, the referral source shall nominate The Arc/NC LIFEguardianship Program to the appropriate Clerk of Court for the legal appointment to be made. The Protege Review Committee shall meet monthly to screen all referrals, review updates on each ward/protege served, and make major decisions on protege issues requiring consent (e.g. surgery and other medical treatment, placement, habilitative or rehabilitative programming, etc.).

To ensure the delivery of guardian of the person services, two primary direct service staff members would be employed through the pilot project. A full-time Assistant Program Director/Guardianship Specialist who would devote 25% of their time assisting the Program Director and 75% working with and on behalf of the wards/proteges would be needed (see draft job description in Attachment A). A second position involving direct services to the wards/proteges would be that of a Guardianship Specialist (see copy of draft job description in Attachment B). This position is being proposed at a part-time level (50%) the first year of operation and at a full-time level (100%) the second year of the pilot project.

Volunteer Coordinator Consultants would be contracted with to ensure that each ward/protege served was matched with a minimum of one (1) and maximum of two (2) volunteer friend(s)/companion(s) (refer to draft job description enclosed for volunteer in Attachment C).

The Volunteer Coordinator Consultants would be responsible for working part-time to recruit, train and retain each volunteer. They would also ensure that advanced training and appreciation/recognition activities are in place, after the first year of the pilot project, for all volunteers in the project.

In addition to direct service staff, the pilot project would also warrant the services of one (1) part-time (50%) Bookkeeper/Accountant and those of one (1) Part-time (50%) Secretary. The Bookkeeper/Accountant position would enable the project to expand services to include financial management. The secretarial position would enable all newly hired personnel for the project, as well as existing staff to have access and benefits of the usual clerical, as well as other administrative services possible through such a position.

To provide quality financial management services, in addition to hiring a part-time Bookkeeper/Accountant, The Arc/NC LIFEguardianship Program would enter into a contractual agreement with the Life Plan Trust Program. This program was developed and chartered by the Secretary of State in 1990. Its primary purpose is to provide financial management services (see Life Plan Trust Program description enclosed from the Executive Director).

Through this contractual agreement with Life Plan Trust, financial management for the pilot project in terms of guardianship of the estate and representative payee services, would be assured and done on a qualitative level. Services provided through this agreement by Life Plan Trust would be as follows: (1) Serving as guardian of the estate for up to twenty (20) individuals with disabilities in the central region/area in the first year of operation, and up to 15 additional individuals the second year (FY 96-97), who may or may not need a guardian of their person through the LIFEguardianship Program. Referrals would be made through a variety of social service agencies as well as Clerks of Court and the LIFEguardianship Program. Life Plan Trust, Inc. would review all referrals for guardian of the estate services, and make a decision to provide or deny services based on their operating policy. The program would then indicate their willingness to serve in this capacity to the appropriate Clerk of Court, who would then appoint the corporation and arrange for qualification.

Life Plan Trust through the agreement would also serve as representative payee during the first year of the project for up to 20 cases, and the second year for up to 15 additional cases. This shall not include serving those individuals for whom the LIFEguardianship Program is serving as guardian of their person. Payee services for these cases will be provided through the LIFEguardianship Pilot Project Bookkeeper with consultation and technical assistance from the Life Plan Trust Program as needed.

Life Plan Trust shall provide consultation and technical assistance, and work closely with the LIFEguardianship Pilot Project staff (e.g. Bookkeeper, Secretary, Program Director, Assistant Program Director/Guardianship Specialist) and other staff as appropriate in terms of financial management with emphasis on guardianship of the estate, when the LIFEguardianship Program is also serving as guardian of the person for the same individual, and for representative payee services, if both programs are serving the same ward (protege/client/cases).

Examples of the consultation and technical assistance by Life Plan Trust to the LIFEguardianship Program may include, but are not limited to, a) coordinating of expenditures, record-keeping, and cash flow for clients, b) providing information on each guardianship of the estate or representative payee client's account, served by both programs to the Pilot Project Bookkeeper, and c) assisting in preparing and providing information to appropriate legal and social service agencies, who typically handle payee services and guardianships of the estate, such as local Department of Social Services, Area Mental Health Programs, the Interfaith Council, and the Clerks of Court. Other areas where consultation would be provided shall include liquidating assets as needed for expenditures, assisting the LIFEguardianship Bookkeeper with initiating and filing annual accounting reports per ward with Clerks of Court, assisting with the appeal process if government benefits are denied or discontinued, filing annual reports with the Social Security Administration for representative payee services, and maintaining bank accounts/investments separately for each guardianship of the estate client, unless given permission by the Clerk's to pool funds with others. Representative payee (government benefits) funds may be pooled if accounting for each clients's share is separated out.

Funds will be mailed or directly delivered by the pilot project LIFEguardianship staff for representative payee clients and bills paid as necessary from these accounts.

Funds for guardianship of the estate shall be handled by the Pilot Project Bookkeeper (e.g. maintenance and accounting for personal funds, paying of bills, filing of federal and state tax return, etc.).

The budget for this pilot project, is \$155,862.00 for FY 95-96 and \$136,570.00 for FY 96-97, totalling \$292,432.00. (See budgets enclosed for both fiscal years.) In terms of guardianship of the person, this project will enable a minimum of 30 and maximum of 40 proteges to be served during FY 95-96, and a minimum of 40 and maximum of 50 proteges who may or may not be in need of a guardian of the estate, during FY 96-97. Thus enabling a range of 10 to 20 new proteges to receive services the last fiscal year of the project.

The project will also enable guardianship of the estate to be provided to 20 individuals during FY 95-96 and 35 (15 new wards/clients) during FY 96-97.

In addition the pilot project would enable up to twenty (20) representative payee cases the first year and ten (15) additional cases the second year.

Additional benefits that would be gained through this pilot project would include two statewide workshops, one per fiscal year, for training and supporting family members, concerned individuals and professionals to better understand what is and is not involved in serving as guardian. One of the key target populations in terms of family members for these workshops would be family members who have children in the school system approaching age 18. Information and referral services, consultation and technical assistance, as well as legal consultation, would also be available for those who need it.

In conclusion, through coordination and liaison activities of two programs utilizing their expertise, the services of The Arc/NC LIFEguardianship Program with a proven track record in delivering guardianship of the person services, and a contractual arrangement with the Life Plan Trust Program, with a proven track record in financial management, this proposed two year pilot project would result in an expansion of the service population as well as a broader range of guardianship services in North Carolina.

Proposed Service Area for Guardianship Pilot project

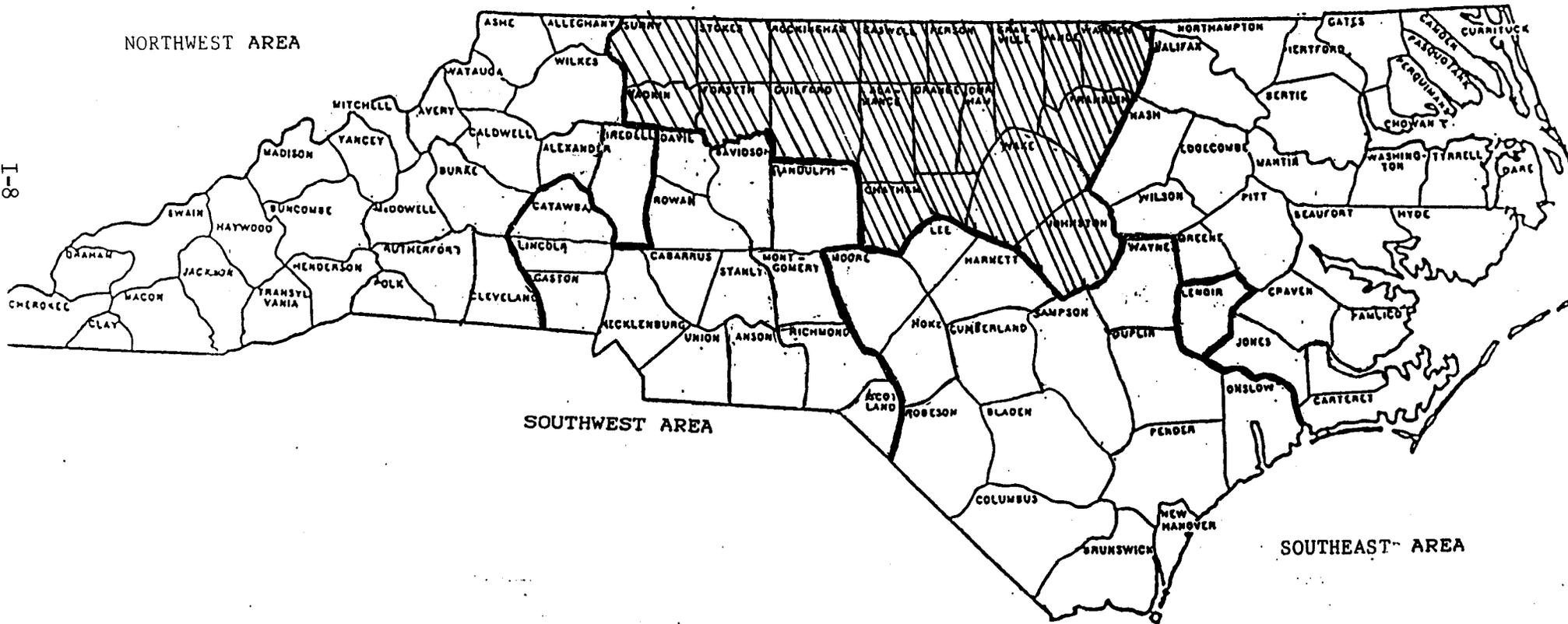
CENTRAL AREA
(shaded)

NORTHEAST AREA

NORTHWEST AREA

SOUTHWEST AREA

SOUTHEAST AREA



8-1

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ATTACHMENT C
VOLUNTEER JOB DESCRIPTION

TITLE: Personal Representative and/or Personal Partner

MAJOR OBJECTIVE: To serve as an advocate for a person with mental retardation for whom ARC/NC, Inc. is guardian.

- MAJOR RESPONSIBILITIES:**
1. Visit protege(s) once a month and report to volunteer coordinator on visits.
 2. Participate in annual Habilitation Plan meetings on behalf of the protege, when possible.
 3. Bring protege needs to the attention of the volunteer coordinator or LIFEguardianship Council staff, who will contact facility staff.
 4. Complete required report forms; attend team meetings once a month.

QUALIFICATIONS: Demonstrated interest in persons with mental retardation and other developmental disabilities; reliability; responsibility; compassion; awareness; compatibility; initiative; honesty; discretion.

- TRAINING AND/OR PREPARATION:**
1. Orientation - 3 hours
 2. Pre-service training - 3 hours
 3. Dates and time TBA
 4. Continuing education - 4 hours/year

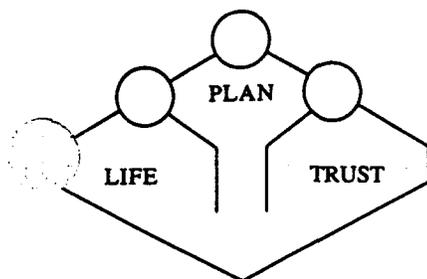
- TIME AND PLACE:**
1. Facilities that serve protege
 2. Local ARC office or other meeting rooms
 3. Dates and time TBA

LENGTH OF COMMITMENT: Minimum - Six Months

ON-THE-JOB-SUPERVISION: Meet at least monthly with Volunteer Coordinator

NAME AND TITLE OF SUPERVISOR: ARC LIFEguardianship Volunteer Coordinator
ARC LIFEguardianship Council Staff
(1-800-662-8706)

4/90



Life Plan Trust: A Resource for Financial Management

Life Plan Trust, Incorporated serves families of individuals with mental illness and/or developmental disabilities across the state of North Carolina. The non-profit organization was co-founded by The Arc of North Carolina and the North Carolina Alliance for the Mentally Ill. Incorporated in 1990, Life Plan Trust provides information on effective future planning for families of individuals with disabilities through a variety of methods, such as free seminars, a quarterly newsletter, continuing Legal Education programs, and a toll free telephone line. Presently, Life Plan Trust is co-sponsored by five statewide disability advocacy groups: in addition to Arc and AML, United Cerebral Palsy, the Autism Society of North Carolina and the Mental Health Association in North Carolina are sponsors. Life Plan Trust provides services across North Carolina: 57 families have future careplans in place for their family members with disabilities, and 11 clients are receiving a variety of direct services, including trusteeship, financial management, regular visits, advocacy, and resource planning.

Life Plan Trust has the capacity to provide for both future needs and current service needs of persons with disabilities. Our organization is recognized under the Community Trust Act in North Carolina, and provides an essential service to families who want to leave some measure of financial security for their loved one with a disability. Life Plan Trust currently serves as trustee for seven small to medium sized trusts, with total assets of \$180,000. Our organization is prepared to serve as Guardian of the Estate and Representative Payee for persons with disabilities across North Carolina, as well as providing assistance in dealing with government benefit program regulations, reporting requirements, and overall management of client funds in an efficient and cost effective manner. We look forward to continuing to work with The Arc of North Carolina's LIFEguardianship Program to serve persons with disabilities across North Carolina who need assistance in managing their financial affairs.

Susan Hartley

Susan Hartley
Executive Director, Life Plan Trust

Life Plan Trust • P.O. Box 20545 • Raleigh, NC 27619 • 919-782-4632 • 1-800-662-8706 • FAX 919-782-4634

A service program of the Arc of North Carolina, the N.C. Alliance for the Mentally Ill, the Autism Society of North Carolina, United Cerebral Palsy, and the Mental Health Association in North Carolina

FY 95-96

Budget for Pilot Guardianship of the Person

Salaries (See Staffing Pattern Below).....	\$61,678.00
Fringe Benefits.....	\$ 9,208.00
Supervisory (Program Director 5%).....	\$ 2,376.00
Insurance.....	\$ 500.00
Professional Fees(see explanation on reverse)....	\$30,000.00
Supplies.....	\$ 1,500.00
Printing.....	\$ 650.00
Telephone.....	\$ 2,300.00
Postage.....	\$ 500.00
Office Space (Share with Arc/NC).....	\$ 3,200.00
Audit Expense (Partial Cost).....	\$ 300.00
Travel.....	\$ 8,000.00
Training.....	\$ 700.00
Protege Emergency Fund.....	\$ 500.00
Equipment/Maintenance & Repair.....	\$ 350.00
Miscellaneous.....	\$ 300.00
SUBTOTAL	\$122,062.00
One Time Expenditure Start-Up Funds:	
Equipment (4 computers, printers, training, software, office furniture, etc.)	\$33,800.00
SUBTOTAL	\$33,800.00
GRAND TOTAL	\$155,862.00

(OVER)

9-15-96
1167

FY 96-97

Budget for Pilot Guardianship of the Person

Salaries (See Staffing Pattern Below).....	\$77,182.00
Fringe Benefits.....	\$10,094.00
Supervisory (Program Director 5%).....	\$ 2,494.00
Insurance.....	\$ 500.00
Professional Fees(see explanation on reverse)....	\$27,500.00
Supplies.....	\$ 1,700.00
Printing.....	\$ 300.00
Telephone.....	\$ 2,300.00
Postage.....	\$ 500.00
Office Space (Share with Arc/NC).....	\$ 3,200.00
Audit Expense (Partial Cost).....	\$ 300.00
Travel.....	\$ 8,600.00
Training.....	\$ 500.00
Protege Emergency Fund.....	\$ 500.00
Equipment/Maintenance & Repair.....	\$ 600.00
Miscellaneous.....	\$ 300.00
GRAND TOTAL	\$136,570.00

(OVER)

9-15-00
14

APPENDIX J

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

95-RGZ-001

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Short Title: Guardianship Changes.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO SUPPORT THE APPOINTMENT OF FAMILIES AND INDIVIDUALS AS
3 GUARDIANS, TO SUPPORT THE EXPANSION AND DEVELOPMENT OF PRIVATE
4 NON-PROFIT CORPORATIONS AS GUARDIANS, TO PROVIDE THAT LOCAL
5 DEPARTMENTS OF SOCIAL SERVICES BE THE ONLY LOCAL HUMAN
6 RESOURCES AGENCY TO SERVE AS GUARDIANS, TO APPROPRIATE FUNDS
7 FOR GUARDIANSHIP SERVICES, AND TO MAKE OTHER CHANGES.
8 Whereas the State of North Carolina supports the right
9 of all citizens to have a fully qualified guardian should one be
10 needed;
11 Whereas the State of North Carolina supports the current
12 statutory provisions for appointment of a guardian for an
13 incompetent adult, including the priority order for appointment
14 of guardians;
15 Whereas, the appointment of a guardian should be a last
16 resort and alternative solutions should be explored and utilized
17 before a guardian is appointed;
18 Whereas individuals who may be able to serve as
19 guardians for incompetent adults face multiple barriers in doing
20 so and need assistance to overcome these barriers;

1 Whereas corporations currently authorized in North
2 Carolina to provide guardianship are not able to do so throughout
3 the State or for adults who become incompetent due to certain
4 disabilities, conditions, or diseases;

5 Whereas the growth in the need for public agencies to be
6 appointed as guardians, when no individual or corporation is
7 available, has averaged twenty percent since 1989, there is a
8 crisis in the public sector due to this growth;

9 Whereas the current statute provides for area mental
10 health programs, local health departments, and county departments
11 of social services to serve as disinterested public agent
12 guardians, area mental health authorities and health departments
13 find it inappropriate to do so and county departments of social
14 services, which have served eighty percent of this need, are
15 willing to continue to meet this need;

16 Whereas funding has not been available to support the
17 implementation of a system which promotes the appointment of
18 individuals and corporations, or adequately provides for
19 guardianship services from local human resources agencies; Now
20 therefore,

21 The General Assembly of North Carolina enacts:

22 Section 1. G.S. 35A-1202(4) reads as rewritten:

23 "(4) The term "disinterested public agent" means:

24 a. The director or assistant directors of a local
25 ~~human resources agency, or county department~~
26 of social services or area mental health,
27 developmental disabilities, and substance
28 abuse authority;

29 b. An adult officer, agent, or employee of a
30 State human resources ~~agency.~~ agency appointed
31 to serve as a guardian prior to July 1, 1995;

32 or

33 c. The director or assistant directors of a local
34 health department appointed to serve as a
35 guardian prior to July 1, 1995.

36 The fact that a disinterested public agent is
37 employed by a State or local human resources agency
38 that provides financial assistance, services, or
39 treatment to a ward does not disqualify that person
40 from being appointed as guardian."

1 Sec. 2. Effective July 1, 1996, G.S. 35A-1202(4), as
2 rewritten by Section 1 of this act, reads as rewritten:

3 "(4) The term "disinterested public agent" means:

- 4 a. The director or assistant directors of a
5 county department of social ~~services or area~~
6 ~~mental health, developmental disabilities, and~~
7 ~~substance abuse authority; services;~~
8 b. An adult officer, agent, or employee of a
9 State human resources agency appointed to
10 serve as a guardian prior to July 1, 1995; or
11 c. The director or assistant directors of a local
12 ~~health department appointed to serve as a~~
13 ~~guardian prior to July 1, 1995.~~ human
14 resources agency, other than a county
15 department of social services, appointed to
16 serve as a guardian prior to July 1, 1996.

17 The fact that a disinterested public agent is
18 employed by a State or local human resources agency
19 that provides financial assistance, services, or
20 treatment to a ward does not disqualify that person
21 from being appointed as guardian."

22 Sec. 3. G.S. 35A-1213 reads as rewritten:

23 "(d1) A disinterested public agent who is a director or
24 assistant director of a local human resources agency other than a
25 county department of social services and who is appointed by the
26 clerk to serve as guardian prior to July 1, 1996 is authorized
27 and required to continue serving as guardian and may not seek the
28 appointment of a different guardian except according to the
29 provisions of subsection (d) of this section."

30 Sec. 4. G.S. 35A-1216 is amended to read:

31 "§ 35A-1216. Rule-making power Duties of Secretary of Human
32 Resources.

33 (a) The Secretary of the Department of Human Resources shall
34 issue rules and regulations for the implementation of the
35 guardianship responsibilities of disinterested public agents.
36 The rules and regulations shall provide, among other things, that
37 disinterested public agents shall undertake or have received
38 training concerning the powers and responsibilities of ~~guardians.~~
39 guardians, and shall include procedures developed by the

1 Secretary to handle and avoid conflicts of interest in the
2 delivery of guardianship services.

3 (b) The Secretary shall promote the use of family members and
4 other individuals and corporations as guardians and shall provide
5 training for family members and individuals as guardians. The
6 Secretary shall provide information on the resources available to
7 guardians in meeting the needs of their wards and shall develop
8 and distribute written materials on the filing of a petition for
9 incompetence and the roles and responsibilities of guardians.

10 (c) The Division of Social Services shall administer the rules
11 and regulations issued under this section and shall establish
12 written agreements as appropriate with other Divisions in the
13 Department regarding their involvement in the promotion of family
14 members and other individuals and corporations to serve as
15 guardians.

16 (d) Budget requests submitted by the Department to the Governor
17 pursuant to Article 1 of Chapter 143 of the General Statutes
18 shall reflect the order of priority for guardianship appointment
19 as contained in G.S. 35A-1214."

20 Sec. 5. There is appropriated from the General Fund to
21 the Department of Human Resources, Division of Social Services
22 the sum of one million eighty thousand dollars (\$1,080,000)
23 for the 1995-96 fiscal year and the sum of one million five
24 hundred thousand dollars (\$1,500,000) for the 1996-97 fiscal year
25 to be used to expand existing private non-profit guardianship
26 corporations and to develop new private non-profit guardianship
27 corporations.

28 Sec. 6. There is appropriated from the General Fund to
29 the Department of Human Resources, the sum of one hundred forty
30 five thousand eight hundred fifty dollars (\$145,850) for
31 the 1995-96 fiscal year and the sum of one hundred forty two
32 thousand four hundred forty dollars (\$142,440) for the 1996-97
33 fiscal year. Of the funds appropriated under this section, the
34 Division of Social Services shall receive eighty five thousand
35 eight hundred fifty dollars (\$85,850) for the 1995-96 fiscal year
36 and the sum of eighty two thousand four hundred forty dollars
37 (\$82,440) for the 1996-97 fiscal year to be used to fund a
38 Program Consultant II position in the Division with the
39 responsibility for handling additional duties placed on the
40 Division resulting from this act and to publish written materials

1 on the filing of a petition for incompetence and the roles and
2 responsibilities of guardians. Of the funds appropriated under
3 this section, the Division of Mental Health, Developmental
4 Disabilities, and Substance Abuse Services shall receive sixty
5 thousand dollars (\$60,000) for the 1995-96 fiscal year and the
6 sum of sixty thousand dollars (\$60,000) for the 1996-97 fiscal
7 year to be used to conduct specialized training on the concerns
8 and advocacy needs of persons with developmental disabilities and
9 mental illness related to guardianship.

10 Sec. 7. There is appropriated from the General Fund to
11 the Department of Human Resources, Division of Social Services
12 the sum of eight hundred fourteen thousand seven hundred eighty
13 dollars (\$814,780) for the 1995-96 fiscal year and the sum of one
14 million three hundred ninety four thousand one hundred seventy
15 eight dollars (\$1,394,178) for the 1996-97 fiscal year to be
16 allocated to county departments of social services to provide
17 guardianship services. Each county shall be allocated a
18 proportional amount of these funds based on their respective case
19 loads as reported to the Division of Social Services. Funds for
20 guardianship services shall be matched by counties at a rate of
21 fifty-five percent (55%) effective July 1, 1995, forty-five
22 percent (45%) effective July 1, 1996, and twenty-five percent
23 (25%) effective July 1, 1997. Counties may use federal funds or
24 county funds to meet matching requirements.

25 Sec. 8. The Department of Human Resources shall report
26 to the 1997 General Assembly and to the Fiscal Research Division
27 of the Legislative Services Office by March 15, 1997 on the use
28 of funds allocated pursuant to this act. This report shall
29 include an analysis of the guardianship services provided, of the
30 number of wards served by the Department and non-profit private
31 corporations, and of the guardianship training provided to family
32 members and individuals.

33 Sec. 9. This act becomes effective July 1, 1995 except
34 that Section 2 of this act becomes effective July 1, 1996.
35 Sections 1, 2, 3, and 8 of this act become effective if and only
36 if appropriations contained in Sections 6 and 7 of this act are
37 made by the 1995 General Assembly. Sections 4 and 5 of this act
38 become effective if and only if appropriations contained in
39 Section 6 of this act are made by the 1995 General Assembly.

40

LEGISLATIVE PROPOSAL

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill provides that, effective July 1, 1995, the director or assistant director of a local health department may no longer be required to serve as a disinterested public agent guardian. Section 1 also provides that, effective July 1, 1995, an adult officer, agent, or employee of a State human resources agency may no longer be appointed to serve as a guardian. At the time of this report, there exist only a few State agency guardians in the State. The legislation, therefore, removes this rarely used option effective July 1, 1995.

Section 2 of the bill removes the director or assistant director of an area mental health authority from the list of persons required to serve as a disinterested public agent guardian. This section becomes effective July 1, 1996 and would leave only the director or assistant director of a county department of social services as a disinterested public agent guardian under the statute.

Section 3 of the bill clarifies that a director or assistant director of a local human resources agency other than a county department of social services who is appointed to serve as a guardian prior to July 1, 1996 must continue to serve as a guardian despite the amendments removing them from further guardianship appointments after that date.

Section 4 of the bill delegates various duties to the Secretary of the Department of Human Resources. The Secretary must: (1) develop procedures to avoid and handle conflicts of interest in the delivery of guardianship services; (2) promote the use of family members, other individuals, and corporations as guardians and provide guardianship training for family members and individuals; (3) provide resources available to guardians in meeting the needs of their wards; and (4) distribute written materials on the filing of a petition for incompetence and the roles and responsibilities of guardians. This section requires the Division of Social Services to establish written agreements with other Divisions in the Department regarding their involvement in the promotion of family members, other individuals, and corporations to serve as guardians. Finally, this section provides that the Department's budget requests must reflect the order of priority for

guardianship appointment contained in G.S. 35A-1214. This statute requires a clerk to seek the appointment of individuals and corporations before appointing a disinterested public agent guardian.

Section 5 of the bill appropriates funds to the Division of Social Services to be used to expand existing non-profit guardianship corporations and develop new corporations.

Section 6 appropriates funds to the Department of Human Resources to establish a new position in the Division of Social Services with the responsibility of overseeing guardianship services included in this act. This section also appropriates funds to the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services to conduct specialized training on the guardianship needs of the developmentally disabled and mentally ill.

Section 7 of the bill appropriates funds to the Division of Social Services to be allocated by the Division to county departments of social services to provide guardianship services. Funds will be allocated based upon county caseloads. These funds must also be matched by the counties at a rate of 55% effective July 1, 1995, 45% effective July 1, 1996, and 25% effective July 1, 1997.

Section 8 of the bill requires the Department of Human Resources to report to the 1997 General Assembly and the Fiscal Research Division of the Legislative Services Office by March 15, 1997 on the use of funds allocated pursuant to this act including an analysis of guardianship services provided by the Department, the number of wards served by the Department and non-profit corporations, and guardianship training provided to individuals.

As referenced in Section 9 of the bill, the act becomes effective July 1, 1995, except that Section 2 becomes effective July 1, 1996. Sections 1, 2, 3, 4, 5 and 8 of the bill become effective if and only if applicable appropriations contained in the bill are made by the 1995 General Assembly.

